

GUATEMALA: THE PROSPECTS FOR PEACE

4. F 76/1:G 93/4

Guatemala: The Prospects for Peace,...

HEARING

BEFORE THE

THE SUBCOMMITTEE ON
WESTERN HEMISPHERE AFFAIRS

OF THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MARCH 3, 1993

Printed for the use of the Committee on Foreign Affairs



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OCT 5 1993
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GUATEMALA: THE PROSPECTS FOR PEACE

WEDNESDAY, MARCH 3, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 2:15 p.m. in room 2200, Rayburn House Office Building, Hon. Robert G. Torricelli (chairman of the subcommittee) presiding.

Mr. TORRICELLI. The committee will please come to order.

Although we in Washington often tend to focus on the negative, the United States has much to celebrate in its relations with Central America. A region that was generally a preoccupation of Washington during the last decade, it is now largely at peace. The civil wars in El Salvador and Nicaragua have ended, a military dictatorship in Panama was overthrown, and in the rest of the region, civilian-elected governments have become the rule, not the exception.

Guatemala presents the paradox of a country with immense natural beauty and an astounding cultural heritage that has been wracked by some of the worst civil violence in all of Latin America. Yet here, too, there has been significant progress.

PRESIDENT SERRANO AND REFORMS

In 1990, there was the first peaceful transfer of power from one elected civilian government to another in Guatemala's modern history. The government of President Jorge Serrano has carried out important economic reforms that will bear fruit in a more modern and prosperous Guatemala.

President Serrano has also dedicated himself to improving Guatemala's tarnished human rights record and has identified the end of Guatemala's decades old insurgency as a key to eliminating the source of many human rights abuses.

Since becoming chairman of this subcommittee, I have maintained a special interest in Guatemala. I have been fortunate to develop a close working relationship with President Serrano and, at his urging, have sought to encourage the insurgency leaders to respond to the initiatives to end the civil conflict.

UNITED STATES SHOULD ACTIVELY ASSIST PEACE PROCESS

Last April I held the first meeting between a Member of Congress and the URNG commander. I have urged the Bush and Clinton administrations to recognize that the United States may have

a unique opportunity to help end this last Central American civil war by becoming actively involved in the peace process.

Today we have the opportunity to examine in greater detail Guatemala's struggle to institutionalize democratic values, create a just society, and end the war. I look forward to hearing from our witnesses.

Mr. Smith.

STATEMENT OF HON. CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SMITH. Thank you, Mr. Chairman.

As we explore the prospects for peace in Guatemala, I too welcome our distinguished panel of witnesses for today's hearing.

President Serrano has given us reason to hope for a peace that is "not only the absence of war, but also the creation of a set of conditions that enable men and women to live without worries or fear."

U.S. policy toward Guatemala must be crafted to contribute positively to the peace process so desperately needed in that country. Clearly a settlement of the decades-long insurgency in Guatemala will provide a foundation for several glimmers of hope which are on the horizon.

The talks of the Commission of National Reconciliation enjoy the commitment, at this time, of both the government and the URNG though tenuous. These talks and the ensuing agreements which could flow from the negotiations offer the best hope for reconciliation.

Frankly, I see all other progress—on human rights, economic growth and favorable international cooperation—largely dependent on those impending peace accords.

First and foremost, I remain deeply concerned however about the reports that the military, civil patrols and police continue to commit a majority of the major human rights violations. According to the State Department 1992 Human Rights Report, "While guerrilla groups are responsible for human rights abuses, human rights groups report that the military, civil patrols, and police continued to commit a majority of the major violations, including extrajudicial killings and disappearances."

Mr. Chairman, we have seen some progress on a number of highly visible human rights cases that demonstrate at least some forward momentum. Certainly the convictions in the cases of Myrna Mack and Michael Devine are encouraging, though not complete.

While I applaud the determination, the convictions and sentences, more can be done and must be done. I hope and believe that the Clinton administration will continue U.S. pressure on the Serrano government with respect to human rights. And, I hope Mr. Serrano and the Guatemalan ombudsman for human rights will welcome our interests in the welfare and the well-being of the Guatemalan people.

After a decade of refugees fleeing into neighboring Mexico and Honduras, and in light of the negotiating position of the URNG, the October agreement on the return of the refugees establishes another historic marker. However, that milestone too is not without

controversy and a legion of short- and long-term problems remain which might derail the resettlement process.

It is clear that confidence in the safety of and resettlement of refugees is crucial to the peace process.

Mr. Chairman, I am eager that we identify the initiatives which could be taken by the United States that would advance these budding trends. The pace and depth of these positive developments in human rights and the peace negotiations must be strengthened so that Guatemala's progress becomes the rule, not the exception.

We must strive to determine in what way we can best help to nurture democratic institutions in Guatemala and encourage the establishment of a sustainable civil society in that country.

I look forward to hearing our witnesses speak to these and other issues and thank them in advance for their participation today.

Mr. TORRICELLI. Thank you.

Ms. Ros-Lehtinen.

STATEMENT OF HON. ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Ms. ROS-LEHTINEN. I congratulate you for continuing to focus on the unsolved problems that continue to confront us in Central America. I welcome the witnesses and extend a special welcome to our friend Dr. Allen Weinstein which, in addition to his many hats, is who is also a professor at Florida International University, my alma mater, and an institution in my congressional district.

We hope that one day we will have a strong center for democracy alive and well at FIU.

Thank you, Mr. Chairman.

INTRODUCTION OF WITNESSES

Mr. TORRICELLI. We would like to hear from the witnesses invited today to testify: Helen Mack, Human Rights Office of the Archbishop of Guatemala; Ernesto Viteri, Guatemalan Government Delegation to the Peace Negotiations; Allen Weinstein, Center for Democracy; and Frank LaRue, Center for Human Rights Legal Action.

Thank you for being with us today and for offering your testimony. We appreciate your cooperation with the subcommittee and your sharing your thoughts. Your testimony will, of course, be offered to each member of the committee in its entirety and entered into the record.

We would ask you to summarize your testimony at this point. Do not feel it necessary to repeat it all since we have it before us. We would like to hear your thoughts and save as much time as possible for discussion afterwards.

STATEMENT OF HELEN MACK, HUMAN RIGHTS OFFICE OF THE ARCHBISHOP OF GUATEMALA

Ms. MACK. Thank you, Chairman Torricelli and thank you to the members of the Western Hemisphere Subcommittee for allowing me to testify before you.

MURDER OF ANTHROPOLOGIST MYRNA MACK

My name is Helen Mack and I am sister of Myrna Mack who was stabbed more than 27 times and murdered by the Guatemalan security forces on September 11, 1990. I am a private prosecutor in the case against ex-Sergeant Major Specialist Noel de Jesus Beteta Alvarez for this murder.

At the time of her death, Myrna was conducting academic research among the displaced groups who were victims of the political violence in Guatemala. Myrna studied the processes involved in the eventual return of both the internally displaced and the refugees to their homes. She was killed because she revealed to us the human drama of the war, and because she urged all Guatemalans to join with these people in their desire to shatter the perverse logic of the military conflict.

The crime was politically motivated and was directly linked to the armed conflict. This conflict, according to the reports of human rights institutions, continues to be the primary source of violations of the most fundamental rights of the Guatemalan people.

COVERUP IN MURDER INVESTIGATION

The official institutions charged with assembling the evidence in Myrna's case have participated in an active coverup of crucial elements of the investigation.

The police report which implicated Beteta in Myrna's murder was altered before being sent to the courts. When the true report surfaced, the principal police investigator, Jose Miguel Merida Escobar, was killed because he testified in court and identified Beteta as the principal suspect. All of the physical evidence from the scene of the crime was lost. The fact that evidence which had been collected was subsequently thrown out indicates manipulation and destroys the scientific seriousness and professionalism of the forensic work. These examples of hiding and destroying key evidence demonstrate the serious obstruction of the investigation into my sister's murder.

MACK CASE IS A TEST OF JUSTICE IN GUATEMALA

Working under these conditions, we have encouraged the prosecution of Myrna's killers over the past 2½ years. Twelve judges have presided over the case, the majority of whom sought to remove themselves from the trial out of fear for their lives. Various witnesses have given testimony and have had to go into exile because of death threats.

National and international opinion has focused great attention on this case because it represents a test of justice in Guatemala. Throughout the course of the trial, my family, friends, witnesses and any other person directly or indirectly connected to Myrna's case have been the objects of surveillance, phone taps, intimidation, threats and harassment.

A conviction for the murder of my sister was delivered in the first phase of the proceedings, but this decision is under appeal by both sides. With a blatant strategy of intimidation being carried out against all of the people connected with the process, it is likely that the verdict will be reversed.

For our part, we are insisting that the degree and level of responsibility of Beteta's superiors be investigated. We feel that it has already been proven that Beteta did not act alone, and that the government was involved in the murder.

Given this, it seems clear that orders must have been issued by Beteta's superiors for my sister's murder. By not issuing a sanction against these superiors, the Guatemalan Government has demonstrated its lack of political will to apply the law to everyone, without exception.

U.S. INVOLVEMENT IN CASES IN GUATEMALA

Mr. Chairman, the support of the U.S. administration and Congress for the case was key in getting Beteta Alvarez extradited to Guatemala, and has also been crucial in expressing concern for the physical security of the people linked to the case. Without this support, the case could not have advanced, and it is essential that it continue.

There exist other concrete cases of which are of interest to the U.S. Government. None of these have had favorable resolutions: Among them are the murder of U.S. citizen Michael Devine, the kidnapping of North American nun Dianna Ortiz, the murder of police investigator Jose Miguel Merida Escobar, the Taxisco massacre of 11 civilians and the extradition of ex-Colonel Ochoa Ruiz for drug trafficking.

UNITED NATIONS SUGGESTS INVESTIGATIONS AND DISCIPLINARY ACTIONS

The common denominator in all of these cases is the involvement of military officials and/or security forces.

With its peculiar arrogance, the government expects the families of the victims to obtain and submit proof of the crimes committed by the security forces. This demonstrates once again the lack of will to accept responsibility as a government, in both the investigation and prosecution of crimes.

The Expert of Human Rights for the United Nations, Professor Christian Tomuschat, recommends in his latest report that when a serious crime is attributed to the security forces, an investigation should be initiated and disciplinary measures should be taken.

He also recommends that the results of the investigation and the disciplinary proceedings should be brought to the attention of the public. He uses Myrna's case as an example, and expresses his view that the armed forces have failed to make an effort to clarify the case and reestablish military honor. In the same report, Tomuschat recommends that the Estado Mayor Presidencial—the presidential guard—should be revised and replaced by a civilian body.

The President and Vice President of the Republic of Guatemala, in statements to the press, have declared that they disagree with the recommendations of Professor Tomuschat.

I hope that the U.S. Government will continue to pay attention to concrete cases. Such international attention encourages citizens to exercise their civil and political rights and challenges the impunity which exists in Guatemala today. In this way, the United

States can play an active role in strengthening the rule of law and promoting the transition to a true democracy.

GOVERNMENT AT RISK

Mr. Chairman, it is not power that is at risk in Guatemala, but a style of government. It is not a system that is a risk, but a fragile and elusive peace, which is a small shelter before a storm which never ceases. We are a force for democracy and liberty in a country dominated by authoritarianism and militarism.

The Guatemalan military, with its peculiar vision of internal security, jealously guards the right to decide the conduct of the government and the application of the law according to its own convenience.

We want justice, not vengeance. We want consistent proof that this unjust and painful suffering will not continue or be repeated. For this reason, we ask that the proceedings against the superiors of Beteta Alvarez be left open, so that the degree of their responsibility in the crime can be investigated, determined and sanctioned.

Our determination is centered on the issue of legality: We want the state to realize that their current path is a dead-end which is increasingly damaging to the majority of the Guatemalan people. We call for an end to the institutionalized coverup and illegalities, and ask that justice and respect for human rights be made a priority.

Thank you.

Mr. TORRICELLI. Thank you, Ms. Mack.

[The prepared statement of Ms. Mack appears in the appendix.]

Mr. Viteri, welcome.

STATEMENT OF ERNESTO VITERI, GUATEMALAN GOVERNMENT DELEGATION TO THE PEACE NEGOTIATION

Mr. VITERI. Thank you, Mr. Chairman. Thank you Congressmen and Congresswomen. I am a member of the Guatemala Peace Commission and as such I would like to address the four points on the agenda sent to me by Congressman Torricelli.

HUMAN RIGHTS

As to the situation of human rights, I would like to state that that is an historic, sorrowful situation. It is not a matter that has come out in the last 30 days. This unfortunately has been here for a long time.

I would state that the present government did a good job in trying to direct the attention of the people of Guatemala toward human rights. I think that the Serrano government has been successful in reducing substantially the violations of human rights.

Ms. Mack's case here for example would have not been tried and would have not been ended if it had not been for the Serrano administration. I think that there has been a significant reduction in the violation of human rights, both Mr. Tomuschat and the Department of State report so prove, and there is a fight against impunity.

Our legal system, however, is weak in that and I will talk later about a great development there.

REFUGEES

Secondly, I would like to talk about refugees. Since 1986 the situation with refugees has reversed. Instead of more people leaving Guatemala, groups of people have been coming into Guatemala.

By 1993, there is an estimate of 10,000 refugees that have come back without much advertisement. In January of this year, the first large group of collective returnees came in, over 2,400 of them. Even though they were politically manipulated without regard for their human rights or their security, they fortunately reached their place of settlement without problems and they are established and in their land.

INSTITUTIONS OF GOVERNMENT

As to the institutionalization of the government, since our constitution was issued in 1985, we have had for the first time in our history six elections between general elections and municipal elections, all of which have been pure, clear and unquestionable. We have had the experience of having two successive civil governments, the second coming from an opposition petition.

The Congress and the Supreme Court are controlled by the petitions of opposition. The Army is subordinated and loyal and supports the government. In the 2.5 years that have gone by, there has not been one threat of a coup d'état even though courageous steps have been taken by Mr. Serrano.

The crucial point in the institutionalization of our civil government is the new goal of criminal procedure issued last year which is to become effective in September which changes the semisecret and written procedure we have been accustomed to to an oral and public procedure.

This is a radical fundamental change and I think this will be a great weapon to fight human rights violations and to fight impunity.

THE PEACE PROCESS

The peace process, I am a member of the Peace Commission. I will not go into details going back last year or even before, but just since President Serrano's proposal made before the United Nations last January. It is a proposal to achieve peace in a short period. It requires a more active participation of the United Nations.

It accepts URNG's insistence that human rights verification be immediate. We have agreed to modify an agreement where international verification was to start when the peace agreement was signed.

We are willing to have it immediately. We have proposed that we discuss all the items on the agenda during a period of 90 days and that negotiations continue thereafter in a time of peace because a cease-fire will occur in the 90 days. But the main thing is we have an agreement on human rights now that the government has acceded to the URNG proposal.

The reply to the proposal of President Serrano has been vague, if not contradictory. At first they sort of agreed to a deadline, but thereafter they have changed their position and assume a very, I would say, negative position. They do not want a deadline. They

want to continue on discussing the items on the agenda forever and that is not productive.

Last week I attended a meeting in Mexico lasting 4 days. We did not get concrete results, particularly with regard to a deadline. We have reached close approximations as to the way the process is to carry on, including signing of a human rights agreement and the other elements of the President's proposal, but I hope that when we meet again on May 10 with the URNG in Mexico we will complete this and set a course for progress, that will be irreversible and that will have deadlines.

I want to make a closing statement. We do not need an armed confrontation to open political spaces. Those are open. We have requested and have insistently requested URNG to benefit from the market in the democratic ways and means to resolve our problems.

Thank you very much.

Mr. TORRICELLI. Thank you for your statement.

Doctor, we are going to suspend for a few minutes for a vote. We will return shortly. The committee will suspend for 5 or 10 minutes.

[Recess.]

[The prepared statement of Mr. Viteri appears in the appendix.]

Mr. TORRICELLI. The committee will please come to order.

Mr. Weinstein, please proceed at this point.

STATEMENT OF ALLEN WEINSTEIN, PRESIDENT, CENTER FOR DEMOCRACY

Mr. WEINSTEIN. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I want to thank you for your invitation to testify today. My remarks reflect the Center for Democracy's experience in Guatemala and throughout Central America, but I should stress are personal in nature.

GUATEMALA POSSIBLY NEARING PEACE

I want to begin by commending you and this subcommittee for focusing public attention through these hearings on the critical moment at hand in Guatemala's tragic 30-year war for achieving peace, deepening democratization, and beginning national reconciliation.

When the Guatemalan Government of President Jorge Serrano's negotiators and those from the URNG insurgents next meet in Mexico City on March 10, they have an opportunity to come to closure on fundamental agreements related to human rights and international verification procedures which, if secured, can begin the difficult but achievable process of terminating, finally, Central America's last, longest and bloodiest civil war.

VINICIO AND RAQUEL CEREZO

How that war began and why it has continued to this day are subjects beyond the scope of this brief statement. My personal encounter with Guatemalan realities began here in Washington 10 years ago when two young opposition political leaders, Vinicio Cerezo and his wife Raquel, walked into my office at the Democracy Program where I and my staff were putting the finishing touches on the National Endowment for Democracy proposal.

The Cerezos calmly analyzed the existing brutal military rule and political realities of their country only to assert, surprisingly, that free elections and the beginnings of a genuinely democratic society would occur within a matter of a year or two.

I remained skeptical, but they were correct, up to a point. An internationally supervised election did bring Cerezo and his Christian Democrats to the presidency, but did not decisively change some of the underlying realities of Guatemalan society: Specifically, a powerful and quasi-autonomous military, especially controlling the largely indigenous areas of the Guatemalan back-country insurgency, widespread and violent human rights abuses, political instability and gross corruption linked to narcotrafficking.

CENTER FOR DEMOCRACY PROGRAMS IN GUATEMALA

For 3 years during the late 1980's, the Center for Democracy coordinated an AID-funded program in Guatemala of technical assistance to their first democratically elected Congress, a program ably and bravely run—virtually all Members of the Congress at the time had bodyguards and “packed” as they saying goes, for self-protection—by Caleb McCarry, who now runs our programs throughout the Americas and to whom I suggest the chairman might also wish to address questions this afternoon.

We have worked with all Guatemalan parties and leaders, and through contacts outside the country are also familiar with the concerns of the URNG. Presently, the Center heads a consortium providing technical assistance to legislatures throughout the Americas, efforts which have brought us into further continuing contact with Guatemalan leaders, including President Serrano.

SUGGESTIONS FOR U.S. POLICY

For brevity's sake, Mr. Chairman, allow me to use my remaining minutes to suggest some steps which your subcommittee and the Congress generally and the Clinton administration might wish to consider to provide some useful help in reinforcing the prospects for peace in Guatemala.

None of these will be unfamiliar to you and your colleagues.

My premise, however, is that the role to be played usefully by the United States in the Guatemalan peace process at this juncture is, by definition, limited and secondary to both the actions taken by the negotiators and reaction to their progress within Guatemala itself.

SUPPORT FOR DEMOCRATIC INSTITUTIONS

One, support Guatemala's fragile democratic institutions. We should recognize that President Serrano and other political leaders have taken considerable political and personal risks, alienating antidemocratic extremists capable of armed retaliation. We must signal to democracy's adversaries in that country that we know them and will support the peace process against their machinations, whether by denying them entry to the United States or other steps available to us.

Support the Guatemalan Congress with further technical assistance. Encourage new “rule of law” initiatives designed to strengthen

en the judiciary and improve its performance while encouraging military subordinate to civil law and government through creative programs such as the ones sponsored by Ambassadors James Michel and Thomas Stroock during their recent tenure. Above all bolster, by every signal available, our commitment to the strengthened legitimacy of civilian rule in Guatemala. A negotiated peace agreement will surely add extraordinary strains to that already burdened political culture as we have seen in El Salvador and Nicaragua.

MILITARY ACCOUNTABILITY FOR ALL PARTIES

Two, address creatively the problem of military accountability, both for the Guatemalan Army and the URNG.

Any peace agreement should include important carrots and sticks for the opposing military forces. The benefits might involve internationally funded job retraining, scholarships, land purchase, and agricultural assistance programs for resettling officers and soldiers—obviously, only those not guilty of atrocities or human rights violations—on both sides.

The latter would involve, under U.N. auspices, international military observers from countries such as the United States, Mexico, Canada, and Spain to monitor human rights abuses along with civilian observers while helping to further professionalize the Guatemalan Army in its reduced post-civil war role. This process will involve working with Guatemalan military leaders willing to support the peace process—as has been critical in the El Salvador accords.

HELP FOR REFUGEES

Three, assist the returning refugees both economically and with greater internationally monitored efforts to assure their physical security and integration. This point is both self-explanatory and cost effective if existing private assistance efforts—both Guatemalan and foreign—receive timely supplemental funding.

MILITARIES NEED TO BE BROUGHT UNDER CIVILIAN CONTROL

Confront the long-range challenge within Central America of bringing the region's militaries under firm civilian control. Be assured that Guatemalan military leaders watch with more than passing interest the implementation of the Salvadoran peace accords as these affect the agreed replacement of key officers.

They also monitor closely the touchstone question for civilian rule in Central American democracy of whether the Chamorro government will compel Chief of Staff Humberto Ortega and other Sandinista military and internal security officials still sheltered by General Ortega to resign.

CENTRAL AMERICA SHOULD NOT LOSE U.S. ATTENTION

All of the above points will be moot, Mr. Chairman, if Central American democratization—an issue which only a few years ago deeply engaged the people of this country, its executive branch and the Congress—remains off the radar screen of public debate as it does today.

American influence in the world is inexorably related to our willingness to confront the toughest issues directly. Guatemala remains one of the most difficult ones for U.S. policy, partially because our economic and political impact on Guatemalan culture is far less decisive than elsewhere in Central America for a range of well known historical reasons.

We should, nonetheless, as you have done today, try to refocus public attention on the importance of both sides in the current negotiation transcending the bitter historical legacy of generations in the interests of a democratic and peaceful solution.

In that process, the United States plays neither a broker's nor a belligerent's role. Rather, we are in the more delicate but comparably important position of a friend of Guatemalan democracy and of peace in that country concerned deeply with the success of a process over which it has only limited influence. Let us, at least, exert that limited influence now, when it is most urgently needed.

Thank you.

[The prepared statement of Mr. Weinstein appears in the appendix.]

Mr. LaRue.

STATEMENT OF FRANK R. LaRUE, DIRECTOR, CENTER FOR HUMAN RIGHTS LEGAL ACTION

Mr. LaRUE. Thank you, Mr. Chairman.

I would like to thank the chairman and the members of the subcommittee for holding these hearings on Guatemala, drawing attention to a country that is seldom remembered.

PROBLEMS REMAIN AFTER SERRANO INAUGURATION

The inauguration of President Serrano brought a lot of expectations to Guatemala because it was the first consecutive government in many years. This created many expectations for transformation. A few months later the people of Guatemala have been able to testify that few changes have occurred.

The two dominant problems remain, there is generalized violation of human rights due to the impunity with which the security forces can act and the lack of prosecution and serious investigation into those cases with the exception of a few highly visible cases and the dominant role that the military plays in the Guatemalan political structure that allows them to have a de facto veto power, that allows them to control the national budget and control elements of diplomacy.

DELAYS IN PEACE NEGOTIATIONS

It is difficult to find substantial military representation in international forums that deal with human rights as the U.N. or the OAS. The situation can change and should change through the peace negotiation process. I think that process remains as the main hope for transformation in Guatemala.

The negotiation process has been delayed for a year. It was stalled for a year because of inability to sign a human rights agreement. Particularly it was known there was opposition from the military to accept the provisions related to a truth commission, called the Commission of the Past, that would investigate past

abuses of human rights, especially atrocities committed in the early eighties.

SERRANO PROPOSAL

Recently President Serrano, in early January unveiled a new proposal and this is a very important development. He made it public in January in the Guatemalan Congress and at the U.N. The proposal of President Serrano has several aspects that should be encouraged.

Number one, it got the negotiations back on track. Secondly, it establishes a timetable of 90 days. Whether it will be 90 days or not at the end, at least it brings relevance to the issue of time and how fast the pace should be in order to reach a prompt peace in Guatemala.

Thirdly, it establishes clearly the need for an U.N.-organized verification team on all the agreements that will be signed.

President Serrano I think should be given credit for having initiated the negotiations between the government and the URNG, for having persuaded the military to participate, and now for this latest initiative. But we are worried that this initiative of President Serrano and the enthusiasm we have found in the United States and the international community does not deal with a fundamental issue, the content of those negotiations.

Everybody seems excited about the issue of time. I assure you that peace is a urgent necessity in Guatemala. But peace cannot be reached by a simple signing of an agreement. Peace needs a fundamental transformation for Guatemalan society.

CONDITIONS FOR PEACE IN GUATEMALA: HUMAN RIGHTS, DEMOCRACY, AND DEMILITARIZATION

Although the negotiating parties have some difficulty in establishing them, I would like to at three of the essential bottom line conditions that should exist in order to make peace possible and reliable in Guatemala.

HUMAN RIGHTS

The three are, number one, respect for human rights. Human rights is, yes, a technical issue with regard to the judiciary and training of relevant personnel, but it is importantly a political issue. There has to be the will and determination to cease impunity, to guarantee citizens the right to truth, to investigate fully the abuses of the past, not the present, to be able to prosecute and present charges against those responsible for those abuses.

Remember that in the case of El Salvador the negotiations really got an enormous degree of strength and dynamic when the parties negotiated the San Jose agreement on human rights. A relevant issue in El Salvador is the existence of the truth commission that has made everyone in the country accountable to it.

PARTICIPATORY DEMOCRACY IN A DIVERSE SOCIETY

The second aspect is a democratic model, a more participatory democracy. It is clear that in Guatemala, yes, there are many sort of democratic institutions established in the constitution by law,

but it is also clear that the way they are established and the way they function does not respond to Guatemalan reality.

Guatemala is a country with 23 different ethnic groups—22 indigenous and 1 nonindigenous group—23 different languages, with a cultural diversity throughout the entire territory that is not represented in national political structures. It is important to guarantee municipal autonomy, to create regional autonomies, but also to make sure that the electoral parties and the electoral system have a chance to represent all sectors of the Guatemalan society in these new political structure.

DEMILITARIZATION OF THE STATE

Third is the need to demilitarize Guatemalan society. The Army can no longer continue being the dominant political factor of the state. If this continues, there will be no chance of peace. The Army has to change its role and there should be a constitutional reform in which it will no longer be in charge of internal security, only of the sovereignty of the territory of the country.

The Army of Guatemala should not be able to control civilian forces like the national police or the treasury police, it should not have one of the largest budget in national expenditures, and it should not have special accords which exonerate them from being prosecuted.

The expert on human rights at the U.N. pointed out himself that it is important to abolish this sort of selective jurisdiction of courts; that everyone who violates human rights should be accountable to the regular criminal courts of the country.

UNITED STATES AND ITS ROLE IN GUATEMALA

If Guatemala remains as it is today, peace will not be reached regardless of how many agreements can be signed. Transformations although few should be granted. The United States has a paramount role in this. It is up to the negotiating parties to establish these conditions in their agreement, but the United States has a big role to play in Guatemala.

It is often said that the United States does not have the influence in Guatemala they had in El Salvador. That may be true, but that is not to understand that it has no influence at all. The Guatemalan Government and military and the URNG follow very closely the signals coming from Washington.

The policy of the Bush administration up to now has been going in the right direction. Military aid was suspended in 1990. The last 4 years of human rights reports from the State Department have been very critical of the situation there.

Congress has conditioned tacitly ESF to an improvement of human rights and recently the U.S. Trade Representative accepted for review the General System of Preferences on what Guatemalans do to violations of internationally recognized labor rights.

We think these policies have to be continued, but the signals have to be clarified. It is sometimes inconsistent to say that military aid is suspended, but IMET programs still continue in Guatemala or that the U.S. National Guardsmen are still having operations in Guatemala, which sometimes can become confusing, like

the fact that there was a National Guardsman exercise while the refugees were returning to Guatemala.

UNITED STATES SHOULD STRESS HUMAN RIGHTS

One of the aspects I would like to suggest is for the United States to continue its policy that up until now it has had, but to deepen the policy to make the messages clearer and to include a strict determination of human rights and other of its procedures in relationship to trade, but also in application of the 701 section of the Law of the International Financial Organizations Act to use human rights as a criteria for determining the vote of the United States at international banking institutions.

I think that what is important to determine here is whether what we want is a quick and fast peace agreement, but with little content which will have no fundamental guarantee of succeeding or whether we want substantial changes in Guatemala beginning with the process of demilitarization that would allow Guatemala to become a democratic society and eventually respect human rights for all its citizens.

Thank you very much.

Mr. TORRICELLI. Thank you, Mr. LaRue.

[The prepared statement of Mr. LaRue appears in the appendix.]

COMMENTS ON PRESIDENT SERRANO

Dr. Weinstein, it is no secret that I have been an admirer of President Serrano through the years because I believe that, for all the difficulties in Guatemala that remain, the course of the country has been changed. There is clearly a commitment to reform and mostly to setting this conflict. My own admiration for President Serrano I hope is well placed.

Would you comment on that?

Mr. WEINSTEIN. Well, if I may say, Mr. Chairman, I didn't detect even from Mr. LaRue any strong personal critique of the president as such; rather of the policies. There were complimentary words in his presentation, which was otherwise critical of the Guatemalan military and government, of the general thrust of what President Serrano has been doing.

I will state my position very simply. I have known President Serrano from the time that he was a candidate dismissed by most people in this country and elsewhere, I think in one public opinion poll he had 2 percent of the vote and he began rising and reached the presidency as a person who has done more in the way of these initiatives than I expected from him, has taken more risks than I would have expected of the president and his government.

I think the debate at this point seems as much as anything else over strategies to be implemented, if you will, by both our Government and the Serrano government. I will for one defer to Guatemalans, my Guatemalan friends of all parties, in a debate over what their government should do.

As far as our Government, President Serrano should be supported now, but more importantly we must decide whether we want to maintain some momentum here.

One can dismiss the signing of an agreement rather easily. An agreement was signed in El Salvador and it in fact has helped in

the transformation, has created what my Israeli friends like to call facts on the ground with the FMLN leadership coming into San Salvador and enjoying access to the media, organizing, starting businesses.

A lot of things are happening at a time when not each of the agreements is being honored. I would like to see something designed between these two parties that says they are preaching from the same hymnal and have the same goal in mind.

PRESIDENT SERRANO'S CHALLENGE TO BRING PEACE

Mr. TORRICELLI. Mr. LaRue, would you concede that for all the frustration of Guatemalan social and economic conditions and the limits of Guatemalan politics that President Serrano has genuinely been a positive force in moving this country forward?

Mr. LARUE. I think he has the credit of having initiated the negotiation process. He has a major credit of having brought the military to the table in negotiation.

Mr. TORRICELLI. Having brought the military to the table does he have the ability to actually preside over the kind of comprehensive civil and political settlement that you envision?

Mr. LARUE. I think that is the biggest challenge he has.

Mr. TORRICELLI. Is it possible?

Mr. LARUE. Only to the extent that the international community brings pressure to bear on the military. President Serrano should be encouraged, but pressure should be brought to bear on the military; otherwise they will have no reason to make concessions.

CIVIL POLICE AUTHORITY STILL NOT ESTABLISHED

Mr. TORRICELLI. In any of your judgments, why has the movement to create an entirely civil police authority not been more successful as promised? Is this possible in the current arrangement of power within the country? Anyone.

Mr. VITERI. Thank you, sir.

For the last 40 years, more or less, the chief of police has been a military person. The police force has been under kind of a security force. Mr. Ceraso closed the policemen school in 1986. Most of our police force is not a trained police. President Serrano has reopened the policeman school in 1991, the end of 1991.

There have been about 400 policemen that have graduated from that school recently. We have dismissed over 1,800 policemen from the old police force. The police force is made up of about 10,000. There have been strong efforts to change the possibility of investigation of the police. And finally, we have had a civilian head of the police for the last 2 years.

Mr. TORRICELLI. The kind of separation between civil and military exercise of police authority that has been discussed and promised, in large measure has not occurred.

Mr. VITERI. If I may, sir, the problem is this: As we do not have a police profession where a policeman can go up the ladder and get to the highest posts, the chief of police has been named—the three last chiefs of police have been civilians. The present one was the President of the association of Judges And magistrates. But there is no middle echelons.

You either have a head and you have a lot of horse force, but you have nothing in the middle. The government has had to rely on the military to come as advisors to the chief of police and they have been there for the last 6 to 8 months.

Mr. TORRICELLI. I think it is widely recognized that the exercise of civil police functions by a national military is an invitation not only to abuse, but to separating the people of a country from their own national institutions. I think that is why President Serrano promised in his campaign that indeed that was going to be changed.

Until it is, it will continue to exacerbate the political situation.

CIVILIAN MINISTERS LINKED TO THE MILITARY

Ms. MACK. I want to say that in my personal opinion, the civilian Ministers of the Interior are just a facade.

For example, last year, 1991 when I went to talk with the Minister of Interior and I said I was having death threats and explained him all the problems we had been having, he said it is the police, the ones that are doing this. I said, "No. It is the people of the Presidential Guard." He said, "I cannot do anything. Everybody knows that the police, the second and third chief of the police are military that are under intelligence."

Mr. TORRICELLI. You are largely confirming what was our own belief.

Mr. MACK. The same thing is happening now with the Office of the Public Attorney, attorney general. In one case, for example, the Chief of Investigators of the Public Ministry, everybody knows he linked with the Presidential Guard so there is no use to have judicial reforms if the institutions who are in charge of applying the law are going to be controlled by intelligence military.

We can't have changes in reforms with the law if the police are going to be members of the military.

U.S. TRAINING FOR GUATEMALAN MILITARY IS CONSTRUCTIVE

Mr. TORRICELLI. Lest anyone be confused by why we withhold assistance but continue with IMET or with common training operations, we allow IMET funding simply because it is our belief, and I hope well founded, that it facilitates respect for the law and the reform of the Guatemalan military.

It is our assumption that their access to American training facilities and their relationships with American military personnel is a instructive experience. If that proves not to be the case, I assure you it will be suspended immediately. It is not because of an ambiguous view toward human rights abuses or lack of willingness to withhold American assistance.

Training by American forces is somewhat for the same reason, but also because it serves purposes to provide opportunity for good training.

TAKING THE NEXT STEP TOWARD NEGOTIATIONS

Do you think that the Guatemalan rebels have a sufficiently defined set of political and social objectives, and a cohesive enough

leadership to both articulate and form these goals that make the next step of the peace process possible?

To his credit, President Serrano has made the offer. There have been repeated attempts to engage in dialogue. I have been involved in some of it myself, and I have found some of these rebel leaders to be very well intentioned, but not necessarily settled on what it is they would like to see emerge from this process.

GOALS OF THE GUATEMALAN REBELS

Now that the challenge has gone back to the Guatemalan Government again, is each of you convinced that in the near term they can meet the challenge and state exactly what their objectives might be?

Mr. LARUE. Mr. Chairman, I would say that my experience in having spoken to them and having heard from them, their position is that they have a set of goals which they establish in the document, the big proposal they had by November last year. I think it may be a little bit ambitious, and that is why I think it is important to establish a more bottom-line position.

They have a clear set of proposals. The fundamental problem, I think, would be of the negotiation; and my best personal opinion is that is what will guarantee their personal safety. It is their feeling that the need for accelerating the process is because people want to sign and demobilize and incorporate themselves into the political system. I feel they understand that.

What they have said themselves is, who will provide a guarantee as long as the military continues being the dominant force—

Mr. TORRICELLI. Do you believe this is the largest single item in reaching a peace accord?

You chose to mention it first. Is it because you believe that this is a dominant part of their thinking?

Mr. LARUE. You put me in a difficult position because I have three issues that I mentioned as a personal opinion—what I think are relevant—and I would put first human rights, democracy and demilitarization. What they would consider first, I don't know.

They have been insisting on the signing of the human rights agreement. Their position is that it should be signed immediately and put into effect immediately, and after that the rest of the negotiations could be continued.

Mr. TORRICELLI. In my judgment, the human rights accord will be signed. It appears to me that the demilitarization and the democratization goals that they seek are obtainable in the discussions. That leaves, it appears to me, some of their social objectives, particularly for the native peoples, and the issue of personal security, which can be the most difficult because they are the least tangible.

COMPARING GUATEMALA TO OTHER CENTRAL AMERICAN COUNTRIES

Mr. WEINSTEIN. Mr. Chairman, it seems to me it is important to note two differences between the situation of this group and the situation of similar transitions in both the case of the resistance in Nicaragua and the FMLN in El Salvador. The fact is that this is a far weaker military group, even in that sense, than the resistance

was at that time; and one could argue that. Inarguable is the fact that there has been no middle-ground transition prepared.

In the case of El Salvador, you had political leaders closely associated with the insurgency who came back, who participated in the political process, often at enormous risk to their lives, who in effect raised the comfort level considerably and expanded the political space of that country by their presence. That took place over a period of 2 to 3 years. It also accustomed the society to their presence.

In Nicaragua, you had presidential elections serving that function with a number of people who had been active in the resistance coming back to take part. Here it is cold turkey; I don't think you have a similar case—I am prepared to stand corrected—in which people identified specifically with the military insurgency have gone back, have taken a major political role in the society on terms in which they are still proudly members or at least politically identified with the insurgency.

Mr. TORRICELLI. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. I have a few questions I would like to ask our panel. Thank you for your testimony.

STRENGTHENING AND REFORMING THE JUDICIAL SYSTEM

Mr. Viteri, you spoke earlier about the oral proceedings and the reforms made in regard to the judicial process and how you felt that that might lead to a better human rights situation, perhaps more prosecutions and convictions. Yet Ms. Mack testified how the chief inspector for police after accumulating data and then testifying, was himself killed.

In this country, we are not immune to those phenomena as well. That is why we have a witness protection system to conceal and protect, and eventually hide people who are coming forward with information that might lead to their own killing.

How can the oral proceedings and how can the judicial system be strengthened so that witnesses can feel free to come forward? Knowing that there is some procedure for protecting witnesses who come forward with information in this regard could be helpful to the cause of justice. Anyone of you may want to speak to this, as well—

Mr. VITERI. I am not an expert in criminal law. I am basically a corporation lawyer. I have read the Code of Criminal Procedure. I recall that it does provide for witness protection. It does have a lot of new ideas in it, for example bilingual criminal process, in native language and Spanish, for those who don't speak Spanish to understand what is going on.

My particular concern is that we cannot fail in instituting this oral and public process and that this constitutes such a radical change in our system that we need a lot of assistance. We attorneys have to go back to kindergarten. Judges will have to be retrained. The investigation of the crimes, which now is on the heads of the judges, will have to turn to the Attorney General's Office and to the Supreme Court, who also has an investigative force.

But those are substantive, fundamental changes that have to be done fast. This law is coming into effect next September, and we cannot fail. If this law works—if we have the infrastructure for this

law to work, I am sure that we will avoid people like Ms. Mack here to have to go through the problems she has had dealing with her sister's case. I think that we will overcome those things. I think that the wall of impunity will be definitely thrown out and the process will be the greatest barrier to those that violate human rights.

Ms. MACK. I am not a lawyer, but as I said before, reforms are not—the principal thing, the political will is, and that is why I insist that with cases they have to show their political will. Two weeks ago there was a reform to the judicial organism, and they are centralizing all the power to the President. Instead of democratizing the society, they are centralizing the power.

You have to strengthen civil society. You have to strengthen the judges because they are alone. They don't have any support when they have to make a decision to condemn a person of human rights violations where security forces are involved. This specific case was because there was international pressure, international attention to the judge that she felt supported to make that sentence.

It is not the confirmed, we have another appeal, and let's see what is going to happen. The thing is the conditions, the quality and conditions of the society to guarantee you that you can take a different position without fear of losing your life.

DIFFICULTY OF POLICE PROTECTION

Mr. LARUE. I would just like to add to what Ms. Mack said. There is an inherent contradiction in Guatemala which makes it difficult for protection of witnesses and plaintiffs and judges. When you are prosecuting military personnel or police personnel that acted under orders of the military, it is very difficult then to establish the protection because who is going to protect them.

The government often, and I think out of goodwill, offers protection, but the protection will be offered with the type of personnel that they are prosecuting. That is why I think it is important to first guarantee the total separation of the judiciary from the other branches and then of the civilian security process from military forces.

For example, in the case of Michael Devine, we have recently heard from attorneys in Guatemala, from our Human Rights Center, that the attorney who was legal advisor for the prosecutor for the wife of Mr. Devine was banished Friday of last week. He appeared last night severely beaten, in hospital. No one knows the exact reasons why this happened.

This was in one of the most visible cases. Imagine what it can be in other cases. This is why the issue of judicial reform is very important.

I think the new procedural code is very interesting, but it is also relevant to combine that with a division of forces and a division of responsibilities and a curtailment of the military strength.

Mr. SMITH. It is one thing to hide someone in the United States, but when you have a country that is the size of Guatemala it must be more difficult. Is there any kind of international component under consideration for the hardest cases, for those who are easily recognized? For some, it may be necessary to international refuge to protect them and allow them to come forward and speak out.

Ms. MACK. There is no program.

HOPES FOR AGREEMENT TO IMPROVE WITNESS PROTECTION

Mr. WEINSTEIN. This offers another opportunity for the peace negotiation. I am a great believer in pieces of paper, perhaps unlike some, to start a process. In the end, the real protections of Guatemalans down the road will depend upon the development of a civic culture in which people are willing in growing numbers to continue fighting for their rights.

But in the interim, we have the two sides about to meet again, and it would seem to me that part of the agenda for meetings ought to be some international process to deal with exactly the kind of brutal circumstances that Mr. LaRue is talking about, where people allegedly protecting the witnesses are often the people who may be, in fact, responsible for perpetrating the crimes. Under these circumstances, however, without an agreement on a process that perhaps does not start with the total transformation of Guatemalan realities, some agreement can be reached through the advances that President Serrano and his colleagues and the insurgents have made with the assistance of the commission and others.

These are realities, too, in Guatemala. I don't know anybody there who wants to go back to 1981 or 1982 now. Once again, the answer to the question of how is your spouse is always, compared to what? Compared to what it had been, it is better.

It is not where it should be. I think the peace agreement, if it comes, can serve as an important step in launching some of these reforms.

SHORT-TERM VISAS FOR NGO'S

Mr. SMITH. You testified about the need for internationally monitored efforts with regard to refugees returning. NGO's are only given 30-day visas; is that correct?

Mr. WEINSTEIN. I would have to consult with my friends around the table who might know that better. If that is the case, obviously the government should do something about that to make it simpler for NGO's and anyone else to stay as long as they are not violating Guatemalan laws to stay and bear witness to this process which is so critical to national reconciliation.

Mr. VITERI. As I recall, the agreement of October 8, 1992, made with the CCPPs, provided for visas to all these NGO's that would accompany the refugees. As I recall, there was a condition that they had to be registered and that this registration was going to be very simple. That may be the reason why there are 30-day visas, but getting an extension of a visa is no problem.

RECOMMENDATIONS WHEN CONSIDERING HUMAN RIGHTS RECORD

Mr. SMITH. The U.N. Human Rights Commission in Geneva is considering the human rights situation in Guatemala, and there is concern as to whether or not it will be listed as a gross violator of human rights. What would your recommendation be if you were looking at the record and you were a member of that commission?

Mr. LARUE. I just returned from Geneva last week, and I was able to meet with the U.S. delegation, as well as have some of these discussions at length. I was told by the U.S. delegation that instructions from Washington were to maintain Guatemala under Item 21. I think this is an erroneous track.

I feel that the way to encourage the negotiation process and the way to strengthen President Serrano and civilian authority is to maintain a strong critique of the human rights violations.

In El Salvador during the period of negotiation El Salvador was considered under Item 12 and there was a rapporteur appointed by the commission. This has been kept 2 years later after the peace agreements have been signed, and everyone agrees that this has been a very significant contribution of the U.N. for the peace process in El Salvador. I think in Guatemala it should be the same.

ITEM 12

I recommend that the United States should support setting Guatemala in Item 12 and encourage the Human Rights Commission of the United Nations to appoint a special rapporteur. Dr. Tomuschat is not a rapporteur that can seriously monitor and have an intense critique of the role of violators.

Mr. SMITH. Do you see it more as a tool to try to encourage the process or do you think that the record itself warrants—

Mr. LARUE. Both ways. I think Guatemala has the record of human rights that makes it to be an Item 12. That is a consensus in the commission. There is no disagreement on this. The reason I mentioned the negotiation process is because in the discussions in the corridors between the delegates, some delegates that are not sure where to place Guatemala are saying they are concerned if Guatemala is under Item 12 it could signal a weakening of the Serrano government.

Our position as a human rights organization was that, number one, the situation merits attention because it is a grave situation of human rights, but also it will not weaken the negotiation process. Critique on human rights will actually strengthen the negotiation process.

ALTERNATIVES TO RAPPOREUR SYSTEM

Ms. MACK. Besides the resolution to be in 12 or 21, what is important, you have to demand that all the recommendations of Professor Tomuschat be put on because the government receives sometimes the recommendations, but they don't accept it. So what is the reason to have an expert if they won't accept it?

Mr. SMITH. That has been always one of the weaknesses of the rapporteur system because they correspond back and forth with the government. One of the only elements of implementation we have is moral suasion and having that information out in the open helps to bring scrutiny.

Mr. VITERI. In the human rights agreement that we are negotiating, or we have negotiated with URNG, we have agreed on international verification of the Human Rights Agreement and the human rights situation in Guatemala which provides for an United Nations mechanism, not a rapporteur nor an expert, but people in

the field assisting us, instructing us, criticizing us on our behavior with regard to human rights.

The President Serrano proposal of January accepts that this verification begin immediately, and to me and to the government and to our peace commission this is much stronger, effective, and on a long-term basis, more constructive than having a rapporteur or an expert. Just because of the fact that we have an expert, he has been very objective and clear in his report and in his conclusions, but our feeling is that first we have to strengthen our local institutions that deal with human rights, the ombudsman, the attorney general and things like that.

Secondly, having this mechanism of the United Nations, in El Salvador I think they have 800 people doing that work. If we have a group of U.N. people working on human rights in Guatemala, we will find that the agreement and human rights are respected in Guatemala; and advising and assisting our people to strengthen our institutions having to do with human rights—I think Guatemala will benefit, our institutions will be strengthened, and the future will be clear.

CONSIDERING SLOW OR RAPID PROGRESS IN NEGOTIATIONS

Mr. WEINSTEIN. I don't think I have completely sorted out how, if I were in your shoes, I would stand on this issue. A lot depends on what our estimate is of how long these peace talks will last.

Implicit in Mr. LaRue's position is the assumption that best would be some type of extended, comprehensive process in which a number of transformations within the country were negotiated. That may well be what occurs.

What seems implicit in President Serrano's proposal is some effort to achieve substantial momentum very quickly perhaps within 90 days, 120 days, who knows how much. Under those circumstances, I think I would prefer people on the ground in Guatemala protecting the rights of Guatemalans all over the country, and as many as one could get in under U.N. auspices with the permission of the government and approval of the human rights community.

If my strategy was to turn this into a long, drawn-out process, then I think shifting to, in effect, a Geneva-based, more comprehensive rapporteur might make more sense because it would not assume real change quickly. There is a moment for real change here with all its risks and perils and I would hate to see us lose it.

Mr. LARUE. My proposals do not in any way entail the idea of prolonging the process. I think the benefit of President Serrano's proposal is to hasten the process.

With regard to the U.N., none of these alternatives are contradictory. In El Salvador you have three functions of the U.N. operating at the same time as a complementary force. You have UMSA, the Commission of Truth and now you have the rapporteur. All three have operated and played a substantial role. So the idea of establishing a mechanism of verification for the U.N. does not mean there could not be a recommendation of appointing a rapporteur. A rapporteur is due to Guatemala, given the human rights record up to now.

SITUATION IN GENEVA

Mr. WEINSTEIN. I would add that I appreciate the clarification, but I think I still differ in a tactical sense. If one were to change the situation in Geneva, based upon the actual records of human rights violations, and that was the prime consideration, then I would have no disagreement. If you want us to change it because that is helping President Serrano, it might pay to ask whether President Serrano thinks it is helping him at this time. My impression is that he doesn't, and as someone who occasionally has been informally involved in negotiations, I understand why, because the perception will be that this is being done at this time before March 10 in order to lower the boom further with respect to the international groups.

There is plenty of time to lower the boom on Guatemala if nothing happens in the negotiations. The situation seems to me sufficiently delicate that we might want to see how it plays out for negotiators at their next meeting.

Mr. MENENDEZ [presiding]. Mr. Torricelli stepped out and asked me to chair the meeting.

Mr. SMITH. I have additional questions, but I will wait.

JUSTICE NOT PROGRESSING PAST THE LOWER RANKS

Mr. MENENDEZ. I think it is fair to assume that you do not believe that justice has yet been served in the case of your sister until the intellectual authors of the assassination are brought to justice. You would still take the position that justice has not been served?

Ms. MACK. The process is always up the middle. That happened with the Michael Devine case. It is only to the low rank. If the argument of the government is, are groups out of control, who will control them if not their superiors? That is the reason that it has to be a sanction because it is hard to prove who gave an order to kill people.

There is enough circumstantial evidence to believe—I already proved in the process that Beteta didn't act by himself. Somebody has to be responsible for that murder.

Mr. MENENDEZ. You are satisfied that Beteta was the actual person who committed the assassination?

Ms. MACK. Yes.

Mr. MENENDEZ. Now you are concerned about the next level of who directed him to do that?

Ms. MACK. Yes.

REASONABLE TIME AND REASONABLE ACTIONS ON HUMAN RIGHTS FOR UPGRADE

Mr. MENENDEZ. Add that to the comments made by Guatemala's own human rights ombudsman, who I understand is selected by and reports to the Guatemalan Congress, who criticized the Serrano government in late January of this year for failing to live up to his pledges on human rights; and I am trying to get a sense from having heard the responses to Mr. Smith's questions about whether to upgrade the category.

What is the—I heard, Dr. Weinstein, your comment about, well, if time elongates the process then your views would change. What

is the threshold? Where is it that—Mr. LaRue believes we should proceed now. What is the threshold that triggers our action? What is a reasonable period of time? What are reasonable actions?

Mr. WEINSTEIN. That is a very fair question, Mr. Chairman.

I think the threshold could have been seen months ago or now or 2 weeks from now. This has been going on, after all, for an awful long time in Guatemala, as we know. What is different about this moment is not the human rights violations. Those have been continuing, have been constant; and we have applied all sorts of economic and moral and political pressure and every kind of pressure that we can.

I meant strongly what I said. I am not certain that I am in entire agreement with the chairman on this point as to extent of influence. I know the United States has responded carefully and with sensitivity to our friends in Guatemala, but at the same time I also know that we seem to be punching at the same process with as much frustration now as we have been over the last several years, and yet somehow with the military still as strong and overly independent as it is in Guatemala and exempted in substantial measure from kinds of authority it should have with human rights violations still just terribly significant, we are at a moment when the two sides are facing each other, and with the help of the National Reconciliation Commission and others in Guatemala, are trying to come to terms with each other.

We know the fears of insurgents about returning, what are the fears of some of the military. The question then becomes, what is an appropriate role, not so much for the human rights communities, but what is an appropriate role for U.S. leadership at this particular moment?

I think it is the absolute responsibility of the human rights communities to insist on the strongest sanctions. I think it is also perhaps the responsibility of American leadership to balance off that concern with a concern to move this process along, recognizing that often the best is the enemy of the good.

WITHOUT WITNESS PROTECTION, PROSECUTION FOR HUMAN RIGHTS ABUSES ELUSIVE

Mr. MENENDEZ. With all due respect to Mr. Viteri's testimony, I did practice criminal law at one time, and I would not have a great deal of faith in the Guatemalan witness protection plan. I don't have a lot of faith in the United States' witness protection program. The concern that I have as someone who did practice criminal law is that unless we have a system that those who, in fact, would be protected in terms of giving testimony under perjury in violation of the law would feel free to give that type of testimony; and that includes a structure in which there is an independent judiciary and a structure in which the very forces that Ms. Mack talks about is one which is also independent, then that opportunity will never arise.

If that opportunity never arises, then the opportunity for the successful prosecution of human rights violations seems to be elusive, and as such, then it will depend upon a government that while maybe it has made much progress on this score, it seems to me to

be elusive. You say that there is an agreement that has—and you stressed, has been negotiated. Why has it not be finalized?

Mr. VITERI. Are you referring to the international verification of human rights?

Mr. MENENDEZ. I don't know the agreement that has been negotiated. Is that the one that you are talking about the verification?

AGREEMENT ON U.N. VERIFICATION OF HUMAN RIGHTS

Mr. VITERI. Yes, sir. In December of 1991 we agreed with URNG on four points on the human rights item. One of them was international verification by the United Nations. This is a signed agreement that will cover part of the Human Rights Agreement, the Global Human Rights Agreement when signed.

This agreement on human rights verification by the U.N. provides for a petition from the Secretary General to establish a mechanism for verification of human rights in Guatemala based on the constitutional provisions and all the international treaties to which Guatemala is a party, establishes all powers and authority that the United Nations delegation will have in Guatemala. It is a two-page long document. The main thrust of it is that we had agreed that this agreement was to start whether the final peace agreement has been signed.

Now the President has said, fine, let's start now; once we sign the Human Rights Agreement. This—it is an internal document, but the conciliator has made it public, so I can make it public. It has a full, complete development of what the mechanism will be, what it will do, what it is supposed to do, and the cooperation that the Government of Guatemala has to give it.

GUATEMALA AS TRANSSHIPMENT POINT FOR DRUGS

Mr. MENENDEZ. Mr. LaRue, reading your full testimony, it evoked my curiosity. You talked about drug-trafficking and transshipment of drugs and you describe it as a growing cancer in this small country which enjoys some level of official protection. Could you expound upon that?

Mr. LARUE. Yes, sir.

Guatemala is a small country. Its geography is complicated. It is a country that has many airstrips. Most of the big plantations would have an airstrip due to the inaccessibility or due to the armed conflict that has been in the country for several years.

After the invasion of Panama, a lot of the transshipment was shifted from Panama to Guatemala; and Guatemala has become one of the biggest transshipment points for drugs coming from South America to the United States. This is common knowledge.

Guatemala has an enormous amount of banks, sort of relatively new banks growing, some of them, from rather strange origins. And on top of that, Guatemala has a big boom in certain industries like the construction industry, big houses that used to not be seen, or high-rises, are now being built in Guatemala as the influx of money, of dollars, occurs into the country.

The questions that are to be placed are, why isn't this curtailed in some way? The army—because of the contra insurgency policy and because it is at war, the army is very careful knowing the location of airstrips. There are no significant radar facilities in Guate-

mala. But on the ground the Army knows where the airstrips are, who uses them and what is their use.

It is clear that by the time these airstrips began being used for drug transshipment they could have stopped it, and this has not been the case. Several military officers have been detained related to drug questions. There was a representative of the presidency in the airport of Guatemala City who said he was going to release a list of other army officers involved in drug-trafficking. He was released from court and the prosecution never ended.

This is a problem that preoccupies Guatemala as a whole. I have spoken to church and business firms, and the influx of money is enormous. Some people see this as an alternative to development. Guatemala all of a sudden has money. In reality, this will have no good effect for the population and is having the effect of provoking an enormous degree of corruption and some degree of purchasing official protection at different levels.

MILITARY HAS INTELLIGENCE ON AIRSTRIPS

Mr. MENENDEZ. Do you make that statement based upon your inference that because of counterinsurgency intelligence, the military would know all the airstrips where you could land; or does it go to the individual whom you said had been brought to court?

Mr. LARUE. I mentioned in my statement on two bases. One, on the control the army has of the territory, the army has the capability of stopping the influx of drugs if that were their desire. But I also make it on the basis of individual cases.

BETETA

I mentioned the case of Beteta because that was one of the more significant cases. But I can mention many more.

The most recent case, interestingly enough, is that garrison—is sort of a small, little garrison in the region called Poligono, northern part, where the refugees returned. That garrison was moved from that location as part of the agreement with the refugees.

Well, the international delegations that weren't accompanying the refugees found that there was one plantation adjacent to that small garrison where the army used to be located. So this is just the recent event in a series of events.

So, yes, I would base myself on individual cases as well. And like I said, there could be numerous cases.

GOVERNMENT TAKING ACTION ON DRUG TRAFFICKING

Mr. VITERI. Sir, I think I would say the government's record in regards to traffic is clear. The government with the assistance of the United States has just, and Congress has just, approved a law against trafficking with narcotics, which provides for very, very steep and heavy penalties, including death.

Secondly, there have been a significant number of extraditions that have occurred in the past year of very heavily involved people in narcotraffic. I do not agree with Mr. LaRue's position that because the government has a counterinsurgency system, it should have control of all of the airstrips in the country. I think that is merely an unfounded base or supposition. I cannot agree with that.

URNG INVOLVEMENT IN NARCOTRAFFICKING

But the thing I can say is that—and this was the case he mentioned—there has been significant discussion about the problems in that region. A kid was hurt when a mine blew up around that marijuana plantation. The army has never planted mines. The cache that the Mexican Government captured the last week, which belonged to the URNG, those mines were found there. The government has been blamed for buying mine detectors, which means who places the mines.

Thank God, this kid was not hurt badly. I understand he is in good condition now.

But on the other side, I understand—and the DEA has received and has in its possession information about the URNG's involvement in the protection of narcotics. And in the—yes, basically protection.

Sir, when you have an internal confrontation, when you have areas where you have that, and those significant areas are basically the points where you have either production or transshipment, I don't think it is possible to assert responsibility to the government. The army cannot have control of all of these airstrips; they are spread out throughout the country.

DEA-SUPPLIED HELICOPTERS IN GUATEMALA

Mr. MENENDEZ. Well, to some extent our Government must, because did they not decide not to supply *Black Hawk* helicopters to Guatemala because of their concern about the needs for Guatemala to step up their drug interdiction efforts?

Mr. VITERI. Sir, what I understand is that DEA in Guatemala has more active helicopters than the armed forces.

Mr. MENENDEZ. That is DEA; that is not the Guatemalan Government.

Mr. VITERI. The Drug Enforcement Administration.

Mr. MENENDEZ. Obviously, we would have felt that we could have supplied the helicopters if, in fact, we felt that the level of drug interdiction efforts by Guatemala were significant enough. But as I understand it, our State Department decided not to supply them. So—

Mr. VITERI. I thought we had a good record.

Mr. MENENDEZ. So it would be of concern. Mr. Smith, do you have any other questions?

Mr. SMITH. Yes, I do have just a very brief final question.

CEASE-FIRE ESSENTIAL

Mr. Viteri, or any of you who might want to touch on it, what lessons would you say have been learned from the Salvadoran peace process, particularly in the area of employing dates certain. It is my understanding that URNG is wedded to using dates certain, and perhaps that could be a flaw whether the agreement is finally concluded.

Secondly, what personal guarantees do you think you ought to be providing to URNG concerning the society in Guatemala?

Mr. VITERI. Well, sir, I think that the establishment of a deadline is basic and fundamental. First of all, because we have such killing,

we don't need more people dead. Basically those are dead either on the part of the URNG or the army; they are kids, young kids, mostly from poor families and poor sections of the country, and we cannot allow that to continue.

Secondly, we don't want to—I would not want to equalize our process to the process in Guatemala, because I think there is a substantial difference between one and the other. But I do think that a cease-fire, which is the crux of the proposal, a cease-fire is essential.

I would like to refer to what Mr. LaRue said, that the URNG is willing, or it needs to go deep into the items to be negotiated, and Present Serrano is also in agreement with that.

The 90-day period that Present Serrano proposed is, let's try and reach a peace agreement in 90 days. If we don't, let's put our best efforts on that under United Nations verification and under the reconciliation. If we don't reach agreement in those 90 days, let's have a cease-fire verified by United Nations, and if we still have items on the agenda to be completed, let's go deep into them in peace. And all this process is going to be verified by the United Nations, one.

Secondly, the safety of the URNG combat that come to Guatemala wants a peace agreement signed. That is also to be verified by United Nations. In point one of the Mexico agreement, it is so stated—I had it in my hand a little while ago—but it is stated that United Nations will verify compliance of all the agreements included in the peace agreement. That means, in addition to that, there will be special verification on human rights agreement, and furthermore, Mr. LaRue mentioned the Commission on the Past. We have agreed to have a special observer by United Nations on the Commission on the Past that will study all those violations that have occurred in the past and prepare a report.

So United Nations is involved in those three great items—the verification of human rights, the cease-fire, the Commission on the Past—and the complete and total verification.

Mr. SMITH. Dr. Weinstein.

UNITED NATIONS IS ON OVERLOAD

Mr. WEINSTEIN. I just wanted to add very briefly, Mr. Chairman and Mr. Smith, a couple of concerns. First, the question of the United Nations, it is on overload, as we know; and in some recent processes, as much as we all admire its efforts, I don't think it can be said that in Angola it was terribly successful in the end in preventing two bitter protagonist forces from having at each other, after one disputed the results of an electoral victory by the other. There was a lack of staff, there was a lack of funding, there was a lack of infrastructure to get the job done that they did so ably in Namibia just 2 years earlier.

I would be concerned, quite candidly, that if a piece of paper was signed, which I truly hope it will be by the two sides, that this subcommittee takes some special responsibility, perhaps with others on the House Foreign Affairs Committee, of assuring that we—that is to say, that the U.S. administration, at least, and that our colleagues in the other advanced democracies provide the support and backup for the United Nations to do that job. No one else can with-

in Guatemala. Because I, too, would be much concerned about the physical safety of insurgents in Guatemala coming back under these conditions while the Guatemalan military is so strong and still so unrestrained.

Thank you.

FUNDAMENTAL ISSUES MUST ACCOMPANY CEASE-FIRE

Mr. LARUE. Thank you. I would like to agree with Mr. Viteri on the issue of time. I think that time is of the essence, and peace is an urgent necessity in Guatemala. And I think that establishing a timetable is a positive step. Whether it is 90 days or 190 days, I don't know, but I think it is important; and at the end of the period of time to have a mutually agreed cease-fire, verifiable by the United Nations, and hopefully a withdrawal and a demilitarization and so on, mutually agreed and mutually effective and verified by the United Nations.

I only draw to your attention that that is important, that is relevant, and that has to be, in a way, motivated on both parties and to some degree a pressure has to be put on this process.

But at the same time, we have to pay attention to the content of these negotiations. I think that time is of the essence and the immediate agreement to a cease-fire is of the essence, but to make that peace a lasting peace, there has to be some degree of fundamental, bottom-line issues contained there; and I think the Rule of Law, human rights, the demilitarization are very important, and we cannot ignore them.

Mr. SMITH. Thank you very much.

Mr. MENENDEZ. On behalf of Mr. Torricelli, I want to thank all of the panelists for their testimony. We look forward to continuing to observe the developments in Guatemala.

Thank you very much. This hearing is adjourned.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned.]

APPENDIX

GUATEMALA: PERSPECTIVES ON PEACE
Supplemental testimony of Helen Mack in the United States Congress
Subcommittee on Western Hemispheric Affairs
Washington DC, March 3, 1993

My personal testimony in this important area comes at a crucial moment for the future of my country, Guatemala. Barely three weeks ago, a man named Noel de Jesus Beteta Alvarez, an ex-sergeant in the branch of the Guatemalan army charged with presidential security, was condemned to 30 years in prison for the September 11, 1990 murder of my sister Myrna Mack.

In addition to this, barely six weeks ago, the Guatemalan refugees who have been living in Mexico for the past ten years began their first organized, mass return (2,500 out of 40,000 total refugees). And just this last week, the peace negotiations between the government and the guerrillas was reinitiated after six months of virtual standstill.

Thus, we find ourselves at a critical juncture in Guatemala--this is a moment in which Guatemalan civil society and the international community together can positively influence the course of these events. To begin, I would like to briefly address the peace negotiations which are the principal concern of the Guatemalan people.

The proposal put forward by President Jorge Serrano Elias to speed up the negotiations and reach a definitive peace accord depends upon the support of important sectors of the national and international community. While all of us want to see an end to the nightmare of horror and death that has engulfed our country for more than thirty years, there are still significant obstacles to peace in my country. The different proposals and counter proposals of each side do not necessarily reflect true flexibility and political will to negotiate. Rather, many of these proposals are put forward merely for diplomatic gain. In reality, Guatemala is still dominated by groups whose interest in peace is not sincere, groups who would prefer to let guns continue to do the talking.

In my opinion, the peace negotiations would be able to advance more fluidly and effectively if space were opened for the participation of the Guatemalan civil society and the mediation, monitoring and verification of the international community. It is of supreme importance that this process incorporate visions distinct from the military perspective which currently dominates the negotiations, perhaps simply because of the nature of the parties in conflict.

In reality, the peace dialogue is becoming bogged down in the issue of human rights, the systematic violation of which is one of the manifestations of the armed conflict.

Mr. Chairman:

I would like to take a moment to emphasize this interrelation. My sister, Myrna Mack, at the time of her murder, was conducting research on the populations displaced by the political violence. She was killed because she showed us the human drama of the war, and because she urged all of us to join with these populations in their desire to expose and shatter the perverse logic of the military conflict, which was imposed on them both by the armed forces and by the guerrillas.

Thus, my sister's death was a political murder, directly linked to the armed conflict. This conflict, according to the reports of various human rights institutions, continues to be the principal source of the violation of the most fundamental rights of the Guatemalan people.

With respect to this, I would like to state my concern for the danger to the civilian populations in the zones of armed conflict. The protagonists in this war use these populations as instruments in the military strategy, treating them in a coercive and often arbitrary manner.

Looking to the future, our greatest challenge is to create truly humane conditions for the eventual incorporation of the other 38,000 refugees, and of the even larger displaced population. Thus, an end to the conflict is a fundamental prerequisite to the improvement of the respect for human rights.

I believe that those who claim that advances have already been made are relying upon a simplistic vision which emphasizes the quantitative decline in violations. In my view, this interpretation, although it is encouraging, hides the fundamental problem. The impunity, and the active existence of groups which depend on that impunity to continue terrorizing the Guatemalan population, continue to prevail. In this, I cannot emphasize enough the direct responsibility of the State, which maintains a disturbing passivity with respect to the control of these groups.

The initial conviction of my sister's murderer can only be understood in the context of the intense international solidarity which has surrounded the case, and of the personal will of the judge to apply the law. Yet in any event, this case may serve as a paradigmatic example which contributes to the destruction of that terrible wall of impunity which is strangling our society. This is the first conviction of a crime of State in thirty years. But I must warn you that, if concrete action is not taken, this may remain an isolated case.

Given this, the weakness of the judicial system is an important obstacle. Although our fight against impunity has encouraged many, the loss of autonomy, the polarization and the obsolescence of the mechanisms for applying justice in Guatemala do not constitute a very secure guarantee that the Guatemalan people will be able to exercise their rights.

Mr. Chairman:

Throughout the world, my country is associated with polarization, a culture of violence, intolerance and militarization. These are true, but they are not everything. Little which is said about this mode of power cannot find an audience. But in reality, we citizens have an urgent need to speak out as we to express ourselves in our own voice and to act. In addition, within the very groups which are now power there are critical voices which want to be heard and to help to construct a firm and lasting peace.

To achieve such a peace, we need support in various areas:

- 1) International mediation, monitoring and verification of the peace negotiations and all of the accords which may come from them.
- 2) Concrete commitment to the proposals of the society which rejects the war and offers humane alternatives free of ideology, social status, religion or ethnicity.
- 3) Strengthening of the fight against impunity. Various US administrations have tried to help us reform our judicial system and make it functional. They have promoted programs to modernize institutions and train personnel. But still no change in the system is evident. My experience has been that what we need is not technology, nor millions of dollars. I suggest that what is needed is a new focus. My country, where institutional development is so contaminated, should prioritize the human factor. It is essential that we promote professional investigation into human rights, stimulate an independent press, and create the institutional transparency of the State at all levels. With this, we would be making a fundamental investment for change.
- 4) The future of relations between the United States and Guatemala will be based upon free trade. I don't see how this can be a fruitful relationship unless we are able to end the war, enforce a state of law which will permit peaceful coexistence, reintegrate the populations displaced by the war, and generate political stability which can support the economic stability of families and communities through productive social investment.
- 5) Central America should occupy a place of importance in the agenda of the United States. In the Western Hemisphere we are all sailing in the same boat. Instability in the region affects you, for instance, in the massive migrations which it provokes. At the same time, the stability and the strength of your country helps us by opening up a market for our products.

Mr. Chairman:

When the magnitude of our problems overwhelms me, I think of my niece, Lucky, Myrna's daughter. She, like many young people, embodies the future. We have an enormous responsibility to teach the that this world can be governed, with God's help, in an environment of harmony between people, nations, and Nature. To give them concrete examples of humanity and solidarity--in whatever sphere we involve ourselves--would be the greatest inheritance we could leave them.

HELEN MACK is the sister of Myrna Mack, a Guatemalan anthropologist who was murdered in September 1990. She has acted as a "private prosecutor" in pursuing the court trial of the accused military assassin of her sister. Her courage in pursuing this case, at great personal risk, earned her the Right Livelihood Award (known as the Alternative Nobel Prize). In addition to her rigorous efforts for her sister, she holds a full-time job as administrator of a medium and low-income housing development company.

PREPARED STATEMENT OF
ERNESTO R. VITERI
BEFORE THE
SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
MARCH 3, 1,993.

Subject: Current Situation in Guatemala: its treatment of human rights, the recent return of significant numbers of refugees from Mexico and success in institutionalizing civilian elected government. Prospects for progress in the peace talks between the government and URNG.

1) CURRENT SITUATION IN GUATEMALA:

Guatemala is a very special country, with an area of approximately 42,000 square miles, a population of over 10,000,000 people, where more than 50% of the population is ethnically indian, divided in 23 groups, each with its own particular culture, language and customs. In our 171 years of independent life, we have had over 60 presidents or heads of state and three (3) of them were in power for more than 76 years.

The process of democratization started in 1984 with the election and installation of a Constitutional Body that enacted a new Constitution for Guatemala and the Law on "Amparo", Habeas Corpus and Constitutionality, the electoral law and the law on political organizations, which have a especial status as "constitutional laws" in our legal system. A civilian President, Mr. Vinicio Cerezo Arevalo, was elected by popular vote and took office on January 14, 1986 for a period of 5 years. On January 14, 1991, Mr Jorge Antonio Serrano Elias, also a civilian, succeeded Mr. Cerezo. Mr. Serrano was nominated by an opposition party and this was the first instance in the history of Guatemala where a civilian President, from an opposition party, succeeded another civilian. Both the Constitution now in effect and the law on political organizations, regulate the organization of political parties, without any restrictions for ideological or any other reasons and, to date, there are 18 active, legally

recognized, political parties.

A very important element of our democratic process is the Electoral Court, which was organized and has carried out six electoral processes in the past 9 years, all of which have been unquestionably pure.

The present Congress has 116 Congressmen, representing 13 political parties, none of which by itself has a majority. The party in Government has a minority with less than 25 Congressmen. This situation has led to the need of political alliances and since 1991, the Chairman of Congress has been a member of and opposition party.

The Supreme Court is made up of 9 judges, who serve for 5 years, selected by a special process which allows Congress to elect four Judges of its own choosing. The other five are elected by Congress and must be chosen from a list of 30 candidates designated by a "postulation committee" made up by the Deans of all the Law Schools in the country (currently, 4), an equal number of electors elected by the Bar Association and one elector appointed by the Supreme Court. The present Chief Justice was a member of an opposition party.

Next May, there will be elections for city councils of 276 municipalities (Guatemala has a total of 330 municipalities) and an electoral process is in progress.

2. HUMAN RIGHTS:

a) LEGAL FRAMEWORK FOR THE PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS.

- a.1) The Constitution, defines and describes human rights (both individual and social) clearly and completely. Article 46 of the Constitution provides that international treaties on human rights of which Guatemala is a party, prevail over Constitutional provisions.
- a.2) Guatemala is a party to all major treaties on human rights (including the jurisdiction of the Inter-American Court on Human Rights) and recently ratified the International Pact on Civil and Political Rights. In addition, the Executive Branch has requested Congressional approval of the International Labor Organization's Agreement No.169.
- a.3) Our Constitution created the institution of the "Procurador de los Derechos Humanos" (Ombudsman) and granted it total independence and a strong legal framework that guarantees it. The Ombudsman is elected for a period of 5 years through a special process that requires the participation of

all political parties represented in Congress. Mr. Ramiro de Leon Carpio (who was appointed to complete the term Mr. Gonzalo Menendez de la Riva, who had resigned for reasons of health and old age), was reelected in 1992 for a full period of 5 years. The Ombudsman reports to Congress every year.

- a.4) The Constitutional Law of "Amparo, Habeas Corpus and Constitutionality" provides three basic legal instruments for the defense and protection of human rights: (i) "amparo" is a legal recourse to protect persons against the threat of violation of their rights or to restore and enforce them if a violation has occurred. It is a speedy procedure and injunctive measures may be ordered; (ii) Habeas Corpus is regulated under universal standards; and (iii) a special Court of Constitutionality has as its main purpose the defense of constitutional order and may review any law or regulation if it is contested of unconstitutionality. It reviews, in case of appeal, any decisions issued in "amparo" proceedings.
- a.5) The office of the Attorney General has, among other, the function of prosecutor in all criminal proceedings and, even though the Attorney General is appointed by the President of Guatemala, for a period of 5 years, that office enjoys legal and operational independence.
- a.6) A new Code of Criminal Procedure was enacted in September of 1992. It constitutes a radical change in our legal system, as it provides for oral public procedures, instead of the written and semi-secret process that has been in force for the last century. This new law will become effective next September.

b) HUMAN RIGHTS SITUATION:

Violation and disregard for human rights and impunity for violators have been historical in Guatemala. This situation has existed from the inception of our Country. An armed confrontation that we have suffered during the past 30 years has, in the recent past, contributed significantly to worsen such condition.

Since the start of the democratic process in 1986, the issuance of the current Constitution and the effectiveness of all the legal remedies provided therein (the "amparo", habeas corpus, the Ombudsman, etc). Strong efforts have been made to correct that historical situation. However, it was not until President Serrano

took office, that such efforts have been stronger and more effective.

I can state that (i) the people of Guatemala have in the past 4 years become more familiar with the real meaning of human rights, through the work of the Government the Ombudsman and independent NGO's (both national and international); (ii) the Government and the Attorney General are seriously and deeply devoted to the investigation and prosecution of human rights violations and what has been called "the wall of impunity" has started to disappear; (iii) there have been significant improvements in the human rights situation and the statistics of verified human rights violations have been significantly reduced; and (iv) all "major cases" of violations of human rights occurred over the past years (mainly during the preceding Governments) have been actively prosecuted and results are now evident. In support of that statement, I can cite the following cases, most of which occurred during the past administration:

b.1) MYRNA MACK:

Through the efforts of her sister (Helen Mack), the cooperation of the Government of the United States of America in the location and deportation of the main suspect (NOEL DE JESUS BETETA, an ex Sergeant in the past-President's Military Staff) and the active participation of the Attorney General's Office, this case was brought to trial and the Criminal Court found Mr. Beteta guilty and sentenced him to 30 years imprisonment. Mr. Beteta, Helen Mack and the Attorney General's Office have appealed of the sentence for different reasons and it is now pending decision by the Court of Appeals.

b.2) SANTIAGO ATITLAN MASSACRE:

An Army Sergeant and a Lieutenant in the Army Reserve, were found guilty of the massacre (with different degrees of responsibility) and have been sentenced to prison terms of 20 and 4 years, respectively;

b.3) MICHAEL DEVINE:

The murder of Mr. Devine has also been brought to trial and 6 enlisted men have been sentenced to prison terms of 30 years. Captain Hugo Roberto Contreras Alvarado and 4 enlisted men were acquitted and both Mrs. Devine and the Attorney General's Office have appealed the sentence. Final hearings on the appeal are scheduled for March 5, 1993 and the decision of the Court should issue during the following month.

b.4) TAXISCO MASSACRE:

Eleven persons were assassinated in the road to Taxisco (Escuintla), on August 9, 1991. The then Minister of Defense and the then Chief of Staff of the Armed Forces, notified the President of Guatemala that according to the Army's investigations, the Chief of the Naval Base in Port San Jose, two naval officers and three enlisted men were involved in that massacre, which prompted the issuance of press release by the Army pointing the results of their investigation, condemning the massacre and advising that all the suspects had been submitted to trial. The Court acquitted all of the suspects, because of "lack of sufficient evidence" and the sentence has been appealed. The former Minister of Defense and the former Chief of Staff of the Army appeared as witnesses during the trial and denied ever having knowledge of the involvement of the naval officers and enlisted men in the massacre, which caused their dismissal by the President. The President of Guatemala and two of his Advisors (Mr. Amilcar Burgos and myself), appeared as witnesses to contest the position of the former heads of the Army, but the Court did not accept their statements as "full evidence", because they were not witnesses to the actual crime.

b.5) DIANA ORTIZ:

The Attorney General's Office has appointed a "special prosecutor" (Mr. Fernando Linares Beltranena) who, in cooperation with the Embassy of the United States of America in Guatemala, and a special investigator (Mr. Carl West), has been in charge of the case.

Miss Ortiz appeared before a Guatemalan Court, for the first time, on April 7, 1992, to render her testimony as victim. She also participated in a series of judicial proceedings during the next two days and then left Guatemala, after a press conference. The proceedings are in abeyance, pending her return, as many other judicial hearings and steps that need her cooperation (i. e., a review of the photographic album of policemen in order to identify any possible suspects, etc.) have to be carried out for the case to progress. The former United States Ambassador in Guatemala, Mr. Thomas Strook, the Archbishop of Guatemala and members of Miss Ortiz's congregation have also appeared as witnesses in the case.

SOCIAL AND ECONOMIC HUMAN RIGHTS:

A historical situation of poverty, unemployment, underemployment and social inequity, that has persisted

for centuries, still exists in Guatemala, although the present Government is taking emergency actions to correct them. Among the actions that may be mentioned in this field are:

- c.1) The "minimum wage" has been trebled in the course of the past three years;
- c.2) The forty year old Labor Code has been amended to provide for a simpler procedure for the organization of labor unions and for stiffer penalties for labor law violations;
- c.3) The budget for the Ministry of Education, which in 1990 amounted to Q.450,000.000, was increased to Q.1,200,000,000 in fiscal year 1993 and the budget of the Ministry of Public Health in 1993 is Q.700,000.000, compared to Q.305,000.000 in 1990;
- c.4) Five regional hospitals have been completed and are now in operation and more than 200 health centers in rural and remote areas have been put in operation, all in the past 2 years. IT SHOULD BE NOTED THAT NATIONAL HOSPITALS AND HEALTH CENTERS ARE OPEN TO ALL THE POPULATION AND PROVIDE FREE MEDICAL CARE.
- c.5) "Special" funds, created by the Government and financed by it have been organized during the past 2 years: FONAPAZ (to attend to the economic development of refugees and displaced persons and the communities in rural areas where the internal strife has hit the hardest); FONATIERRA (to acquire land from landowners and to re-sell it at cost to peasants, displaced persons and refugees in long term/low interest basis); FOGUAVI (to finance low cost housing through special funds managed by private banks at reasonable interest rates); FONDO NACIONAL INDIGENA (to promote social and economic development of poor indian communities); and FIS (which is to promote development of small rural communities).
- c.6) Access roads to remote rural areas have been built, with a total of more than 800 kilometers of new gravel roads in the past two years;
- c.7) Vaccination campaigns for children have been carried out every year, for over ten years and their success is measured by the fact that, in 1992, not one case of polio was reported. Guatemala has complied with all international standards in the field of vaccination of children.

c.8) The inflation rate (which in 1990 was around 60) was reduced in 1991 to 10% and in 1992, was 12.2%, without "shock measures".

All the above actions have been made in a stable economy, with relatively little international assistance and mainly with the proceeds of local taxation (an "emergency tax" was enacted in 1991 and a fiscal reform that included a revision of the income tax law and the generalization of the VAT tax of 7%, became effective in July of 1992).

3. REFUGEES:

In the course of the 30 years armed confrontation, many Guatemalans fled the country and sought asylum in neighboring countries. The flow of refugees increased substantially in the latter part of the 70's and early 80's, when the confrontation was more severe. As a result, there were around 45,000 refugees in Mexico, 3,000 in Honduras and many in the United States and Canada.

During the past 6/7 years, from the initiation of the democratic process, there has been a constant flow of refugees returning to Guatemala, to the point that an estimate of 10,000 of them have returned, mostly from Mexico and all of those that had fled to Honduras. The return of these refugees has only slightly been publicized, as they have come in small numbers, in a totally voluntary manner. They have all settled back in their communities, have been accepted there and, to the best of my knowledge, there have been no conflicts in their return or settlement.

In the first days after he took office, President Serrano reorganized the Special Committee for the Attention of Refugees (CEAR) and appointed the VicePresident of Guatemala and other high Officials in Government to head it.

On November 13 1991, in the occasion of a visit of Mrs. Sadako Ogata, (United Nations High Commissioner for Refugees) to Guatemala, a letter of agreement for the conditions for return of refugees was signed between her and the President.

On the basis of that agreement, CEAR and the "Permanent Committees of Refugees in Mexico" (CCPP), with the mediation of a group composed by representatives of the Catholic Church, the United Nations Commission on Refugees (ACNUR), the Ombudsman, and other human rights ONG's and with the support of a group of members of the diplomatic corps in Guatemala, (France, Sweden and Canada), started negotiations to agree on the conditions for the return of the refugees that are organized in the CCPP. An agreement regarding the conditions for the organized, voluntary and peaceful return of those refugees was signed by CEAR, ACNUR, CCPP, the mediating group and the diplomatic support group, on October 8, 1992 and this

agreement triggered the first massive return of refugees.

The Government had proposed that these refugees enter Guatemala from Mexico directly to the place of settlement selected by them (Poligono 14), located in the North West Section of the country, right at the Mexican border, which could be easily reached from the Mexican border in a 25 miles travel in passable roads and that they come in groups of 500 persons, every 4 days, in order to efficiently process their individual documentation, health check-up and the provision of their family placement. The CCPP insisted in taking the "long" route (more than 460 miles), that required a tour of the country, a stay in Guatemala city and going through 20 miles of impassable roads over flooded lands and extreme muddy conditions. The Government finally gave in to their demands, but refused to pay the cost of transportation and feeding through the "long" route and declined responsibility for the risks involved in the long trip. Fortunately, everybody reached Poligono 14 safely and the over 2,400 people of the first group have settled there without problems.

In the agreement of October 8, 1992, the Government of Guatemala, undertook, among other things, to: (i) document every individual refugee; (ii) provide medical examination of each individual upon return and, if necessary, free medical treatment; (iii) supply a plot of land (for those who did not have it) at cost, on a long term/low interest rate basis; (iv) basic food for one year, materials for each family group to build its house, basic community services, seeds, fertilizers and agricultural tools, etc., and (v) to provide a temporary exemption for three years from military service for all those in the military service age.

To my knowledge, except for an incident that occurred in mid-February when a mine exploded near Poligo 14, and a minor was slightly injured, there have been no other problems in their return. This incident has not been cleared out, as the Army contends that such mine had been planted there by the guerrilla and the guerrilla claims otherwise.

In addition to the return of refugees, the Government faces the challenge of the displaced persons that left their communities and of those that did not migrate withstood all the problems of the confrontation and that are as poor and neglected as the returning refugees. This situation presents an additional facet of the problem. In order to re-settle displaced persons and to facilitate the normal reinsertion of refugees in their communities, without creating social problems derived from their "special" treatment, FONAPAZ is developing programs to equalize the treatment and opportunities given to all such groups.

The flow of returnees continues (without much advertising) and in the past few weeks, groups of approximately 300 and 500

refugees (not organized in the CCPP), have returned to Guatemala, without incidents and resettled in their communities.

4. INSTITUTIONALIZATION OF CIVILIAN ELECTED GOVERNMENT:

As stated in the introduction of this statement, our democratic process begins with the election of Mr. Marco Vinicio Cerezo Arevalo (a civilian) and continues at present when a second civilian President, nominated by an opposition party, was also popularly elected and took office.

Under our Constitution, the President is the Commander in chief of the Armed Forces and, in recent history, we have had two civilians in that high position.

In the case of President Serrano (I am not familiar with the situation with Mr. Cerezo), I can assert that the Armed Forces accept and respect him as their Commander in Chief and have proved their subordination and loyalty to him, over the past two years.

To support that statement, I would like to mention some incidents:

- a) High ranking members of the Armed Forces are part of the Peace Commission that is in negotiations with the armed insurgency. In the past, the Armed Forces had refused to participate in negotiations with the guerrilla, so long as they did not lay down their weapons;
- b) Mr. Serrano has, twice in his period, removed the Minister of Defense and the Chief of Staff of the Armed Forces, acting only on his orders and without the need to negotiate with the armed forces (as had been the custom in the past); and
- c) Mr. Serrano and two of his advisors appeared in court, as witnesses for the prosecution in the Taxisco Massacre (See 1-b.4 above) and this bold move, that incriminated the two highest officers in the Army (they had been previously removed from their posts) and the ex-Commander of the Naval Base, did not carry any negative consequences to his authority.

During President Serrano's term, any and all officers or enlisted men that have been identified as responsible for any criminal or improper conduct have been brought to trial and/or dishonorably discharged from the Armed Services.

Another good sign of the institutionalizing of a civilian government is the fact that, for the first time in many decades, the Director of the National Police Force, has been civilian. That position had been reserved for an Army Officer.

Finally, let me point out that under our Constitution, no member of the Armed Forces, that has been in active service during the previous five years may be elected as President and that members of the Armed Forces do not have a right to vote in any kind of national or local elections.

5. PROGRESS OF PEACE TALKS BETWEEN THE GOVERNMENT AND THE URNG:

- a) The process to achieve peace in Guatemala has been given by President Serrano one of the highest priorities, as a means to solidify our democratic process and to allow every resident in Guatemala to live under peaceful conditions. Our Constitution and the Guatemalan reality have opened conditions for anyone to participate in politics, in a pluralistic society, whatever his ideology and without the need to take up arms as a means to open spaces that are inherent to a democratic society.
- b) President Serrano Organized the Peace Commission in March of 1991 and it was originally composed of five civilians (I am proud to have been a member of the Commissions since its birth) and five high ranking officers in the Armed Forces. This Commission represents a legally elected Government, that made the obtention of peace the principal point in its political platform.
- c) On April of 1991, President Serrano issued its "Initiative for Total Peace in Guatemala", where he defined that total peace required four fundamental elements: (i) termination of the armed confrontation; (ii) social and economic equity; (iii) the respect and strengthening of the legal system; and (iv) the progress of democratic process. In this document, the President invited the URNG (Guatemalan Revolutionary National Unity) to follow up on the Oslo Agreement and to start direct negotiating with the Government to reach political agreements leading to a final peace agreement.
- d) The Oslo Agreement, dated March 30, 1990, set the ground for a peace process, that involved meetings of all political parties and social and economic groups in Guatemala with URNG to discuss their respective positions (as a first phase) and, thereafter, direct meetings between the Government and the URNG. Monsignor Rodolfo Quezada Toruño was appointed as Conciliator of the process and the Secretary General of United Nations was requested to appoint an Observer for all the phases of the process. It was also provided that United Nations would be a guarantor of the agreements.
- e) The first meeting of the Government Peace Commission with the URNG, under the auspices of the Conciliator and the United Nations Observer, took place in Mexico City and led to the execution by the parties of the "Mexico Agreement", on April 26, 1991, which established the

rules for the negotiation and the general agenda (English translation enclosed).

- f) On July 25, 1991, the "Queretaro Agreement" on the point of "Democratization for the Achievement of Peace y Political Means" was signed (English translation enclosed).
- g) The next point of the agenda was human rights and URNG presented its proposal on this important matter in October of 1991. It consisted of eleven (11) points and their discussion was started then. Since that date, agreements have been reached on 10 points, as follows.
 - g.1) General Commitment for Human Rights
 - g.2) International verification of the human rights situation in Guatemala, by United Nations. It was provided that such verification was to form a part of the integral verification of the final peace agreement and would start its functions when the final peace agreement had been signed.
 - g.3) Strengthening of the institutions for the protection of human rights (Ombudsman, Judicial System and Attorney General's Office).
 - g.4) Impunity and Amnesties.
 - g.5) Agreement Against Illegal or Clandestine Repressive Forces and for the continuation of the Government's efforts to clean up the security forces.
 - g.6) Military Service (it has to be obligatory, just and non discriminatory).
 - g.7) Protection of Human Rights Activists.
 - g.8) Assistance to victims of human rights violations and their families.
 - g.9) Agreement on the Organization of Civil Defense Committees.

Furthermore, in the meeting held in Mexico in January of 1992, three (3) items on the point dealing with the establishment of Commission of the Past to inform and report on past human rights violations, were also approved and agreement has also been reached (although not signed), on the protection of the human rights of the civilian population and of wounded and captured combatants (g.10). Therefore, as of August of 1992, the only point pending for an agreement on human rights was the completion of the items on the Commission of the Past.

- h) In the latter part of 1992, URNG demanded that the United Nations verification of the human rights agreement have "immediate effect" and that its functions not be deferred until the final peace agreement was signed. This demand caused a stalemate in the negotiations,
- i) With the intention of resuming negotiations and achieving peace in a short term, President Serrano made a proposal to the Conciliator, to the Guatemalan Congress and to the General Assembly of United Nations (on January 5, 14 and 19, 1993, respectively), which consists of the following:
 - i.1) The Government accepts URNG's demand for "immediate" verification of the human rights agreement, by United Nations, provided:
 - i.1.1.) The agreement on human rights be completed and signed and
 - i.1.2.) The negotiation for a peace agreement be carried out continually during a period of 90 days, with the condition that if such goal is not reached timely, the forces of URNG be confined under the protection of United Nations and negotiations continue to achieve a final peace agreement, as soon as possible thereafter, also under United Nations verification.
- j. President's Serrano latest initiative has received ample national and international support and this led to the reopening of the negotiations (which had been suspended since last August). A meeting was scheduled for February 23, 1993 in Mexico City. When this statement was written February 25, 1993, this meeting was still in progress and the URNG was studying the agenda for the meeting proposed by the Government Peace Commission.
- k. Another significant step was taken, when at the request of President Serrano, the URNG presented on May 15, 1992, its position on seven (7) additional points of the general agenda that forms a part of the "Mexico Agreement", although it conditioned their discussion to the execution of the human rights agreement. On June 30, 1992, the Government issued its reply to the URNG's position paper and requested that negotiations on those seven (7) points of the general agenda be "globalized", be carried out in continuous meetings and that the parties ask United Nations to prepare and submit a proposal for the remaining points (all of an "operative" nature), which would be discussed in "parallel tables". URNG has not reacted to this proposal.

6. CLOSING STATEMENT:

I wish to thank the Sub-Committee on Western Hemisphere Affairs for inviting me to appear before it and to present my assessment of the current situation of the different points covered by this statement.

I shall be very glad to provide the Sub-Committee any additional information and to respond to any inquiries it may have on the points covered by this statement, or any others in which I may be familiar.
Thank you.

PREPARED STATEMENT OF ALLEN WEINSTEIN, PRESIDENT, CENTER FOR DEMOCRACY

My Chairman and members of the subcommittee, I want to thank you for your invitation to testify today. My remarks reflect The Center for Democracy's experience in Guatemala and throughout Central America but, I should stress, are personal in nature. I want to begin by commending you and this subcommittee, Mr. Chairman, for focusing public attention through these hearings on the critical moment at hand in Guatemala's tragic 30 years' war for achieving peace, deepening democratization, and beginning national reconciliation. When the Guatemalan Government of President Jorge Serrano's negotiators and those from the URNG insurgents next meet in Mexico City on March 10, they have an opportunity to come to closure on fundamental agreements related to human rights and international verification procedures which—if secured—can begin the difficult but achievable process of terminating, finally, Central America's last, longest and bloodiest civil war.

How that war began and why it has continued to this day are subjects beyond the scope of this brief statement. My personal encounter with Guatemalan realities began here in Washington 10 years ago when two young opposition political leaders, Vinicio Cerezo and his wife Raquel, walked into my office at The Democracy Program where I and my staff were putting the finishing touches on the National Endowment for Democracy proposal. The Cerezos calmly analyzed the existing brutal military rule and political realities of their country only to assert, surprisingly, that free elections and the beginnings of a genuinely democratic society would occur within a matter of a year or two. I remained skeptical but they were correct, up to a point. An internationally-supervised election did bring Cerezo and his Christian Democrats to the presidency but did *not* decisively change some of the underlying realities of Guatemalan society: specifically, a powerful and quasi-autonomous military especially controlling the largely indigenous areas of the Guatemalan back-country insurgency, widespread and violent human rights abuses, political instability and gross corruption linked to narcotrafficking.

For 3 years during the late 1980's, The Center for Democracy coordinated an AID-funded program in Guatemala of technical assistance to their first democratically elected Congress, a program ably and bravely run (virtually all members of the Congress at the time had bodyguards and "packed," as the saying goes, for self protection) by Caleb McCarry, who now runs our programs throughout the Americas and to whom I suggest the chairman might also wish to address questions this afternoon. We have worked with all Guatemalan parties and leaders, and through contacts outside the country, are also familiar with the concerns of the URNG. Presently, the Center heads a consortium providing technical assistance to legislatures throughout the Americas, efforts which have brought us into further continuing contact with Guatemalan leaders, including President Serrano.

For brevity's sake, Mr. Chairman, allow me to use my remaining minutes to suggest some steps which your subcommittee, and the Congress generally and the Clinton administration might wish to consider to provide some useful help in reinforcing the prospects for peace in Guatemala. None of these will be unfamiliar to you and your colleagues. My premise, however, is that the role to be played usefully by the United States in the Guatemalan peace process at this juncture is, by definition, limited and secondary to both the actions taken by the negotiators and reaction to their progress within Guatemala itself.

1. *Support Guatemala's fragile democratic institutions.*—We should recognize that President Serrano and other political leaders have taken considerable political and personal risks, alienating antidemocratic extremists capable of armed retaliation. We should signal to democracy's adversaries in that country that we know them and will support the peace process against their machinations, whether by denying them entry to the United States or other steps available to us. Support the Guatemalan Congress with further technical assistance. Encourage new "rule of law" initiatives designed to strengthen the judiciary and improve its performance while encouraging military subordination to civil law and government through creative programs such as the ones sponsored by Ambassadors James Michel and Thomas Stroock during their recent tenure. Above all bolster, by every signal available, our commitment to the strengthened legitimacy of civilian rule in Guatemala. A negotiated peace agreement will surely add extraordinary strains to that already burdened political culture as we have seen in El Salvador and Nicaragua.

2. *Address creatively the problem of military accountability, both for the Guatemalan Army and the URNG.*—Any peace agreement should include important carrots and sticks for the opposing military forces. The benefits might involve internationally funded job retaining, scholarships, land purchase and agricultural assistance programs for resettling officers and soldiers (obviously, only those not guilty of atrocities or human rights violations) on both sides. The latter would involve,

under U.N. auspices, international military observers from countries such as the United States, Mexico, Canada, and Spain to monitor human rights abuses along with civilian observers while helping to further professionalize the Guatemalan Army in its reduced post-civil war role. This process will involve working with Guatemalan military leaders willing to support the peace process (as has been critical in the El Salvador accords).

3. *Assist the returning refugees both economically and with greater internationally monitored efforts to assure their physical security and integration.*—This point is both self-explanatory and cost-effective if existing private assistance efforts—both Guatemalan and foreign—receive timely supplemental funding.

4. *Confront the long-range challenge within Central America of bringing the regions' militaries under firm civilian control.*—Be assured that Guatemalan military leaders watch with more than passing interest the implementation of the Salvadoran peace accords as these affect the agreed replacement of key officers. They also monitor closely the touchstone question for civilian rule in Central American democracy of whether the Chamorro government will compel Chief of Staff Humberto Ortega and other Sandinista military and internal security officials still sheltered by General Ortega to resign.

All of the above points will be moot, Mr. Chairman, if Central American democratization—an issue which only a few years ago deeply engaged the people of this country, its executive branch and the Congress, remains off the radar screen of public debate as it does today. American influence in the world is inexorably related to our willingness to confront the toughest issues directly. Guatemala remains one of the most difficult ones for U.S. policy, partially because our economic and political impact on Guatemalan culture is far less decisive than elsewhere in Central America for a range of well known historical reasons.

We should, nonetheless, as you have done today, try to refocus public attention on the importance of both sides in the current negotiation transcending the bitter historical legacy of generation in the interests of a democratic and peaceful solution. In that process, the United States plays neither a broker's nor a belligerent's role. Rather, we are in the more delicate, but comparably important, position of a friend of Guatemalan democracy and of peace in that country concerned deeply with the success of a process over which it has only limited influence. Let us, at least, exert that limited influence now, when it is most urgently needed.

TESTIMONY OF FRANK R. LARUE, DIRECTOR
 CENTER FOR HUMAN RIGHTS LEGAL ACTION
 BEFORE THE WESTERN HEMISPHERE SUBCOMMITTEE
 OF THE COMMITTEE ON FOREIGN AFFAIRS
 U.S. HOUSE OF REPRESENTATIVES
 MARCH 3, 1993

I would like to thank Chairman Torricelli and members of the subcommittee for convening this hearing and inviting me to share my views with you.

I. General Background

The inauguration of President Serrano in January 1991 raised expectations, given that this was the first time since 1954 that one civilian President had succeeded another in Guatemala.

None the less, in two years the Guatemalan people have seen no fundamental change in the situation of the country. The Serrano government has proved to be but a continuation of the Cerezo government:

- Lack of respect for Human Rights continues to be the Guatemalan people's main concern;
- The military is still the dominant political force;
- Official corruption is rampant;
- Drug traffic and trans-shipment of drugs are a growing cancer in this small country, an increasing phenomenon which has enjoyed some level of official protection;
- Economically, the country has become more and more polarized, deepening poverty for the majority of Guatemalans.

Regarding Human Rights, we must underline the absence of justice. The impunity with which state security forces violate Human Rights without fear of investigation or of the truth being revealed, as well as the lack of prosecution, has created a pattern of arbitrary use of violence and constant abuse of power.

Guatemala's Human Rights Procurator (Ombudsman), Ramiro de Leon Carpio, processed 6,614 complaints of human rights violations in 1992, compared to 6,295 in 1991. In his annual report for 1992 the Procurator noted:

The number of complaints regarding extra-judicial executions presents a relative improvement, 553 in 1991, and 387 in 1992. Of the 48 of these cases that we have processed so far, 36 are attributed to the state and 12 to subversive groups. Nevertheless, we have to determine whether human rights have been respected, and especially in the case of the right to life, we should not engage in "relativisms." There were less extra-judicial executions, but these grave violations still occurred.

I find myself under the obligation to denounce before the Congress of the Republic, that not withstanding that the President of the Republic maintains a discourse of respect for human rights and of support to the procurator and of seeking that the rule of law be respected...the government of the Republic through its different officials, ministers, presidential secretaries, among others, has reacted negatively to the various pronouncements and resolutions of the procurator challenging him and not accepting the contents of his recommendations, creating in the last few months a public confrontation. As has been stated by the national and international press, when a government acts in this way, it is demonstrating that it takes sides with those who violate human rights, and that it does not have the will to defend those rights.¹

There are numerous cases of extrajudicial executions, arbitrary detentions, disappearances and torture which have been widely documented in Guatemala. Dr. Christian Tomuschat, the UN-appointed expert on Human Rights in Guatemala, has said in the case of extra-judicial executions:

The University sector has continued to be subjected to repression by armed groups in 1992. Several professors and students-in particular at the University of San Carlos (USAC) in the capitol-suffered extra-judicial executions. (para. 112) Priests and members of religious faiths also continue to be subjected to extra-judicial executions. (citing several cases) (at para 114) There were also reports executions of defenders of human rights (citing several cases) Members of certain political parties and their relatives were also executed. (para 116) The practice of enforced or involuntary disappearance persists in Guatemala and is used against peasants, members of Universities or religious faiths, politicians and trade unionists and members of human rights organizations. (para 118) The situation of street children remains particularly worrying, for they are frequently victims of violence and ill treatment by members of the Military Police Flying Squad (sic) and the National Police. The Casa Alianza Association reported that for the period January to September, 1992, it recorded 73 cases of crimes committed against street children. (para. 128)²

Not only has the justice system failed to investigate and prosecute those responsible for human rights violations--with the exception of a few highly publicized cases--the judiciary itself has become a tool of repression, utilized by the military and other government officials as a threat against human rights monitors and all those who dare to criticize government policy. An example of

this can be witnessed in five prosecutions currently underway in Guatemala in which patently false allegations, involving criminal charges of subversion, have been brought against Amilcar Mendez, CERJ leader, for his role in organizing opposition to service in the civil defense patrols.³ In addition, the Army has threatened to bring charges of libel against several persons including: the leaders of the National University Student Association (AEU) of the University of San Carlos, for protesting military harassment of students and professors at the University; Dr. Clyde Snow, the renowned U.S. forensic anthropologist for his public statements holding the military responsible for the deaths of those exhumed from mass graves; and the Archbishop of Guatemala City, Prospero Penados del Barrio, for having granted refuge to Maritza Urrutia, a young woman who was abducted and detained by security forces in July, 1992.

In terms of the role of the military, it is important to stress that all major state decisions must be approved by the Army, giving them de facto veto power. Often the Army spokesperson or the Minister of Defense will respond to questions and issues raised regarding governmental policies or actions, before the President himself has made statements regarding such questions.

Military expenditures constitute one of the largest items in Guatemala's national budget. The Army dominates daily life in rural Guatemala. It forces peasants to participate in civil defense patrols, and has a policy of violent and discriminatory recruitment for military service.

The Army has control over the civil security forces, as well, through its placing of Army officers in key positions of authority, and through its Hunapu forces, which constitute joint task forces involving the National Police, the Treasury Police and the Mobile Military Police, which are technically under the responsibility of different Ministries.

Military presence in civilian affairs is most noticeable in the government delegations which appear before international organizations that address Human Rights, such as the UN and the OAS, where it is not uncommon to find several Army officers seated with the government's delegates.

In relation to drug traffic in Guatemala, it is important to note that the Army controls all airstrips in the country, private or official, and thus would have within its power the capability of preventing the landing of the small planes which transport drugs to the U.S. A recent example of military involvement in drugs is the fact that a marijuana plantation was found in the area adjacent to the military detachment which was transferred to another location due to the recent refugee return.⁴

II. The Peace Process

The Peace Negotiation Process continues to be the main hope for ending the armed conflict in Guatemala, which has lasted over thirty years. It is also a historic opportunity to achieve the basic social and political transformations which are so desperately needed by the country, and which would make a peace agreement a viable alternative. It presents the opportunity to establish conditions under which all the essential rights and freedoms of the Guatemalan people could be fully respected for the first time in their history.

In this regard, President Serrano deserves credit for having initiated direct negotiations between the government and the URNG, as well as for including the military in the government delegation. Serrano wishes to go down in history as the President who signed the peace agreement in Guatemala.

It is important, therefore, to strengthen his possibilities of persuading the military. This will require the international community to bring pressure to bear on the Guatemalan military.

The negotiation process has, for over a year, been paralyzed due to the inability of the government delegation to sign an agreement on Human Rights which would have immediate effect and be submitted for international verification. It is outrageous that there is delay on this issue, given the fact that full respect for human rights is a permanent responsibility of any government.

Human Rights are not subject to negotiation, they constitute an inalienable right of all citizens, and peoples, guaranteed by national legislation as well as by international standards and conventions.

THE SERRANO PROPOSAL

In January of this year, President Serrano made public in Guatemala and later at the United Nations a proposal to negotiate and sign a Peace agreement within ninety days, followed by a cease fire and the demobilization of the URNG combatants.

This initiative was important for three reasons:

- a) It re-initiates the stalled negotiation process;
- b) It gives importance to the issue of time, in achieving peace;
- c) It clearly accepts a verification process by the UN once all agreements are reached.

However, the proposal fails to outline or to suggest any content for the peace agreement; it also fails to outline the basic changes necessary to promote a truly participatory democracy.

Peace is an urgent need in Guatemala, and the international community has responded with enthusiasm to the initiative of President Serrano, but we must recognize that Peace is not achieved simply through the signing of a document...Peace will be the result of an agreement only if that agreement leads to fundamental transformations in the country. If Guatemala remains exactly as it is today, there will be no peace, regardless of how many agreements may be signed for the purpose of image or diplomacy.

Of course, numerous changes are needed in Guatemala, and the Peace Negotiations will not be able to address them all. We need to establish a fundamental bottom line in terms of necessary transformations which would guarantee Peace as a permanent reality.

As my own personal opinion, I would like to put forward three aspects which I consider essential for any serious negotiation; notwithstanding the need to consult with the different civil sectors of Guatemalan society.

These three aspects are:

1) HUMAN RIGHTS:

There can be no Peace, and furthermore no democracy, without full guarantees of respect for the Human Rights and fundamental freedoms of all citizens. But this entails a series of practical matters:

-All citizens should be guaranteed the "Right to Truth". All acts of the State are public, in particular those which encompass abuse of authority and violations of human rights; and all these abuses should be investigated. Any citizens who have been limited in the exercise of their rights or those of their relatives or community, have the right to demand full disclosure of the relevant information and to know who is responsible for these abuses.

-This principle is valid for the past as well as for the present. A government that is afraid of the Truth is not a democratic government. Transitions to democracy in Argentina, Chile and El Salvador have all been accompanied by Commissions empowered to fully investigate atrocities of the past and determine those responsible for them.

-It is essential to guarantee as well, the Rule of Law. All Human Rights violations should be investigated by the judiciary, and those responsible should be prosecuted through the regular criminal court system. There is no reason to accept a "special" standard, or to have separate "military courts" with special jurisdiction. Military courts should exist only for violations of the military code. As Dr. Tomuschat stated in his report:

The extension of the military jurisdiction is excessive and is a blatant obstacle to the proper conduct of the

legal proceedings in which members of the armed forces are accused of serious violations of human rights. In a democratic society the military jurisdiction is reserved exclusively for offensives of a military nature. (Tomuschat report at para. 245)

The Rule of Law also implies a guarantee that all citizens, regardless of race or social status, should have equal access to the courts, including the use of their native language in court.

- To guarantee full respect for Human Rights, a mechanism of international verification through the United Nations should be established. Also, the U.N. Human Rights Commission should be asked once again to appoint a Special Rapporteur for Guatemala.

2) A PARTICIPATORY DEMOCRACY:

In a country with 23 ethnic groups and an equal number of languages, with the regional and cultural diversity of Guatemala, it is urgent to reform the Constitution so that it guarantees equal access to public office to all citizens, a respect for municipal autonomy, the development of regional autonomies, and the establishment of political parties and an electoral system that would allow all sectors of the population full representation, guaranteeing to all these sectors a voice in the national political bodies and in their decisions.

In a country with a majority indigenous population, it is unacceptable to have a government which represents the interests of a small privileged minority.

3) DEMILITARIZATION:

In order to achieve any progress in Guatemala, the Army has to change its role. It can no longer be the dominant factor in the political system. This is true for any country in the world.

- The Guatemalan Army can no longer be in charge of the country's internal security. That is the function of civil security forces and of the judiciary, and therefore, the articles of the Constitution referring to the role of the Army must be reformed.

- In a country plagued by poverty and lack of basic public services, the military can no longer continue to be one of the largest segments of the national budget. The military should enjoy no special privileges at the expense of the rest of the society.

- The Army should no longer control the lives of ordinary citizens. Therefore the civil defense patrols should be abolished, as recommended by U.N. expert Dr. Tomuschat in his report of 1992. An important example of the benefits of demilitarization can be found in the case of Santiago Atitlan, where the population has now lived in peace, after demanding the withdrawal of the military garrison following the massacre of 13 townspeople there.

- The military should not be allowed to participate in public office while on active duty.

- There has to be a clear separation of civil and military responsibilities and authority. The military should yield to the authority of the civilian government. Therefore, the Hunapu forces should be dismantled, as suggested by Tomuschat in his 1992 report.

- All Guatemalans should feel free to press charges against military personnel whenever they suffer any abuse without fear of reprisal.

- If military service exists as a general obligation by law, it should be applied equally, without discrimination on the basis of race, culture or social status.

All of the above three aspects are related, and each is essential to the other. Without these basic and minimal transformations, we cannot speak of a new Guatemala, and will only fool ourselves if we think Peace is possible without them.

The international community, and the U.S. in particular, should recognize these aspects as essential for a new era. If they are not accepted, how can anyone guarantee to the URNG that they can safely become a legal and public political movement in the country? Who can even guarantee their personal security, and thus, who can persuade them to sign the agreement and to demobilize?

The dream of signing Peace in ninety days is a wonderful thought, but only relevant to the extent that the government and Army of Guatemala commit themselves to a democratic transformation of the country.

The example of El Salvador is very significant. It was the agreement on Human Rights in San Jose, that made possible the subsequent accords. El Salvador has many problems yet to solve, but it is no longer a military-dominated country, and those who have violated human rights have become accountable to the Truth Commission.

Some in the U.S. have come to believe that a Peace agreement should be signed first, and that democratic transformations will follow. I do not understand the logic of such reasoning. If Peace is signed and the international community gives credit to the government and particularly to the military, what would be the reason, their motivation for changing the status quo, for losing their privileges?

The Army of Guatemala uses the internal armed conflict to justify its role in internal security and its repressive policies, but does not rely exclusively on it. The Army can easily find another rationale, such as popular unrest due to poverty, drug-

eradication - despite their own participation in this - or the use of sheer force, if it needs to supply other reasons to support its policies and maintain its privileges.

III. U.S. Policy

Guatemala is the one armed conflict left in Central America, a region historically important to the U.S. because of its proximity. This conflict affects trade with Mexico and the possibilities of economic integration of the Central American region. It is an obstacle to further Free Trade Agreements between North America and Central America.

It is common to hear U.S. policy-makers lament the fact that their influence in Guatemala is much more limited than in El Salvador. It is a given that in El Salvador the U.S. had more influence on the military due to its own history of involvement; but that should not lead us to conclude that in Guatemala it has no influence at all.

The U.S. is, after all, the unchallenged world superpower. How can anyone minimize the importance of its role in a small country like Guatemala, so near its own borders? Guatemala not only needs the recognition of the U.S. and its economic assistance, but also depends heavily on trade with the U.S. The Guatemalan government and military follow very closely the signals sent from Washington.

The Bush administration was moving in the right direction, but without the needed determination:

- a) Military aid was suspended unilaterally in 1990;
- b) During the last four years the State Department's Human Rights Report has been very critical of the situation in Guatemala;
- c) Ambassador Thomas Stroock made continual and open reference to U.S. concern for the human rights situation;
- d) Congress tacitly conditioned ESF to respect for human rights in Guatemala, and by its constant pressure, effectively made a few relevant human rights cases move forward;
- e) The U.S. Trade Representative accepted for review a petition for the suspension of preference in the Generalized System of Preferences (GSP) to Guatemala, due to the violations of internationally recognized labor rights in the country. This motivated a very positive response from the Guatemalan government and business community, to the extent that several labor disputes were rapidly solved.

The U.S. has the ability to achieve a swift response from the Guatemalan government when the U.S. is determined and its signals are clear. In the past some of Washington's signals to Guatemala

have been confusing, on the one hand military aid was suspended, but on the other the administration pressured Congress to appropriate money for military training for the Guatemalan Army through the IMET programs. The amounts of money were rather small but the significance could easily be misunderstood. In the same way, U.S. National Guardsmen have engaged in exercises in Guatemala, the timing of which coincided with major events in Guatemala such as the return of refugees, an already tense political moment.

Given the interests of the U.S., and the need to support the Peace Process in Guatemala, I would make the following policy recommendations:

1. According to statements made by the new President of the U.S., Bill Clinton, and given U.S. legislation, Human Rights should be made a priority in the concerns expressed to the Guatemalan government. The U.S. should encourage the Guatemalan government to sign the Human Rights agreement within the Peace Negotiation Process as a basis for concluding the remaining topics of the peace negotiations;

2. The policy maintained heretofore should be continued and made more explicit. Signals have to be clear; it would be inconsistent to suspend military aid and at the same time maintain IMET training programs and military exercises by the U.S. in Guatemala;

3. Human Rights and Labor Rights as a concern should be considered in all commercial relations with Guatemala. The GSP for Guatemala should remain under review for another year;

- 4) Human Rights concerns, according to section 701 of the International Financial Institutions Act, should be considered relevant in deciding the U.S. vote on loans to Guatemala at the IDB, World Bank and IMF. Given that the World Bank has established "good governance" as a major criteria in granting loans to countries, the questions of corruption and accountability should also be relevant.

- 5) The U.S. should make Human Rights a priority when considering Guatemala at international organizations, such as the UN and the OAS. At the UN Human Rights Commission, the U.S. should support the appointment of a Special Rapporteur and the consideration of Guatemala under Item 12 of the Agenda.

There has been a mistaken assumption that criticism of the Serrano government on its Human Rights record will weaken Serrano's position before the military in the negotiation process, when the contrary is true. Only if the military understands that Human Rights are of paramount importance to the U.S., as well as for



other countries, will the military limit its actions and be willing to make concessions.

The interest of the U.S. in the peace negotiation process should not be only expressed in terms of concern about the amount of time taken to conclude the negotiations, but also in terms of the content of those negotiations, if Guatemala is to reach a lasting peace and a transition to true democracy. The crucial question remains: Does the U.S. want a fast but meaningless agreement signed, or does it want a substantive and verifiable Peace Agreement?

Footnotes:

1. Report of the Procurator for Human Rights regarding the situation of human rights observance in Guatemala in 1992, presented to the Congress of Guatemala, pp. 2-3, 4-6.
2. Report by the Independent Expert, Mr. Christian Tomuschat, on the situation of human rights in Guatemala, December 18, 1992, presented to the United Nations Commission on Human Rights, Forty-ninth session. U.N. Document E/CN.4/1993/10.
3. See report of the Robert F. Kennedy Human Rights Center on Civil Defense Patrols in Guatemala, March, 1993.
4. See In Situ Report on the First Collective Return of the Refugees to Guatemala, January-February, 1993, by the Center for Human Rights Legal Action/Centro Para La Accion Legal en Derechos Humanos, February, 1993.



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